

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

ORIGINAL

IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION AND MOTION  
FOR ALTERNATIVE PROCEDURE TO MANAGE  
THE SECTION 271 PROCESS

**Case No. 3269**

## TRANSCRIPT OF PROCEEDINGS

**JANUARY 23, 2002**

**DAY TWO**

BE IT REMEMBERED that on the 23rd day of January, 2002, this matter came on for hearing before ELIZABETH C. HURST, Hearing Examiner, and PATRICIA O'BRIEN, Certified Court Reporter of the firm SANTA FE DEPOSITION SERVICE, 110 Delgado, Santa Fe, New Mexico, at the Public Regulation Commission, 224 E. Palace Avenue, Santa Fe, New Mexico.

A P P E A R A N C E S

PRESIDING: ELIZABETH C. HURST, ESQ.

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# PROCEEDINGS

JANUARY 23, 2002

HEARING EXAMINER: Back on the record.  
Good morning. We recessed yesterday afternoon during the Redirect of Mr. Badal and we are back to begin again.

Mr. Munn, if you would like to continue.

MR. MUNN: Thank you. Madam Hearing Examiner, yesterday you had actually asked a question of Mr. Badal around Page 15, Line 1, of his Rebuttal Testimony. You were asking for the FCC rule regarding the 60 percent utilization rate with number blocks. It's actually a data request response and I made enough copies to hand out to everyone. I thought I could just recite the rule, instead of reading a long rule and Order into the record.

HEARING EXAMINER: All right. That's fine. Thank you, Mr. Munn.

MR. MUNN: You are welcome.

JOHN BADAL

The witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MUNN:

Q. Mr. Badal, do you recall yesterday being asked some questions about a Wall Street Journal article that is marked as AG's Exhibit No. 1?

A. Yes, I do.

Q. Mr. Badal, you were asked to read and comment on a portion of that Wall Street Journal article; correct?

A. Yes, I was.

MR. MUNN. Your Honor, may I approach?

HEARING EXAMINER: Yes, sir.

BY MR. MUNN:

Q. Mr. Badal, I would like to ask you to read some additional portions of that article to give a better perspective on what is actually addressed therein.

If you could please read those portions I highlighted from the AG Exhibit 1.

A. The article starts by saying:

Terry Rich remembers when long distance calling was a bargain and the big phone companies fought for her business. Those



1 days have passed. After the fierce price  
2 wars of the 1990s, long distance phone  
3 bills are steadily rising for customers  
4 such as Mrs. Rich, of Upland, California.

5 Then the next highlighted section we have  
6 here:

7 The increases are happening as the cost of  
8 providing long distance service is  
9 actually falling. Technology has made it  
10 cheaper than ever to handle calls, and the  
11 big long distance companies have benefited  
12 from cuts of more than \$3 billion in fees  
13 they used to pay for the regional phone  
14 companies to complete calls.

15 MR. WITT: Your Honor, at this point I'm  
16 going to object. I don't see that this is at all  
17 related to the Cross-Examination or to the Direct  
18 Testimony of Mr. Badal. Perhaps I'm missing  
19 something.

20 MR. MUNN: Your Honor, I would suggest  
21 that it is related since this is a one-page exhibit  
22 that Mr. Badal was specifically questioned about and  
23 asked to read from. So I think the portion will be  
24 clear, I think, in another 15 seconds.

25 Under the rule of option of completeness

1 and of fundamental fairness to not have -- have the  
2 article taken out of context, I think helps,  
3 especially in light of the fact this will be very  
4 quick and we will be done, like I said, in 15 seconds.

5 HEARING EXAMINER: I'll give you a little  
6 latitude. I'm starting to wonder, too, Mr. Munn, what  
7 the point is.

8 As was said yesterday by, I believe,  
9 Mr. Mittle, a newspaper article is what it is. So at  
10 this point, I don't honestly know the point of reading  
11 the whole newspaper article in here. But if you tell  
12 me it's just going to take a few more seconds of  
13 reading at this point, I will overrule the objection.  
14 And go ahead and make your point, sir.

15 MR. MUNN: Thank you, Your Honor.

16 THE WITNESS: On the bottom of the first  
17 column, bottom of the page in the first column I'll  
18 read:

19 The nation's largest providers, AT&T  
20 Corporation, WorldCom, Inc., MCI, Inc.'s  
21 MCI Group and Sprint have either raised or  
22 are planning to raise their basic rates in  
23 coming weeks to as much as 35 cents a  
24 minute during the day from about 26 cents  
25 a minute in 2000

1 BY MR. MUNN:

2 Q. Thank you. Mr. Badal, do you recall  
3 yesterday in response to some questions by Mr. Mittle  
4 regarding footnote 11 of your January 11th, 2002,  
5 Redirect?

6 A. Yes, I do.

7 Q. Have you, overnight, had an opportunity to  
8 check that cite for footnote 11? I believe  
9 Mr. Mittle had indicated that that was somehow an  
10 incorrect cite.

11 Is that correct?

12 A. Right.

13 Q. Have you had an opportunity to double-check  
14 that?

15 A. Yes, I have. Actually, I am reading from a  
16 copy of the Telecommunications Act of 1934 as amended  
17 by the Telecommunications Act of 1996. That cite  
18 accurately refers to the definition of telephone  
19 exchange service. The cite is correct, if Mr. Mittle  
20 would like to see it.

21 Q. Just as long as you can confirm that the cite  
22 is correct as written, I just wanted to make that  
23 clear.

24 And Mr. Badal, you were also asked  
25 yesterday about what things could Qwest have done in

1 response to the Antonuk Track A report.

2 Do you recall that?

3 A. Yes, I do.

4 Q. Is there anything additional that Qwest did  
5 do in response to that report?

6 MR. MITTLE: I'm going to object. When I  
7 tried to follow through on this line of questioning,  
8 Counsel for Qwest objected. The Hearing Examiner  
9 sustained the objection.

10 My right to Cross-examine was limited  
11 based on a question that was not substantially  
12 different than the question that's being asked now.

13 MR. MUNN: Your Honor, my memory of what  
14 occurred yesterday is that the question was asked what  
15 Qwest did. I believe that Mr. Badal was permitted to  
16 address that question. Actually, I think the question  
17 probably was what Qwest could have done. I'm trying  
18 to establish what Qwest did do in response to that  
19 Track A Order.

20 MR. MITTLE: Which is going to open the  
21 door to what Qwest didn't do, which is exactly where I  
22 was going with my questions.

23 HEARING EXAMINER: I recall the question  
24 in the subject matter you asked the question about  
25 could they have done something with the UNE rate.

1 MR. MITTLE: Yes.

2 HEARING EXAMINER: And that was objected  
3 to and I did sustain the objection.

4 MR. MITTLE: Right.

5 HEARING EXAMINER: Because it was -- so I  
6 think, Mr. Munn, that he's right.

7 MR. MUNN: Okay. Your Honor, if I could  
8 please explain. His question, then, the subsequent  
9 question, at least, about UNE rates certainly was an  
10 irrelevant inquiry for Track A. This is something  
11 that Qwest specifically did in response to the Antonuk  
12 report that directly addresses Track A.

13 MR. MITTLE: Actually, it is directly  
14 relevant and that's what the United States Court in  
15 the District of Columbia said in Sprint, when they  
16 looked at and reviewed UNE rates vis-a-vis Track A.  
17 They are related. And I have a copy of the case if  
18 you would like to review it.

19 MR. MUNN: Your Honor, actually, the DC  
20 Circuit didn't review UNE rates in the context of  
21 Track A. That would, of course, be the public  
22 interest analysis, not Track A; they are two different  
23 things.

24 Your Honor, I can make this point on the  
25 brief. The record is very clear that Qwest has filed

1 a Motion to Compel with the Commission to compel  
2 responses to the Staff survey. I don't need to ask  
3 this question. It seems like it's a waste of time.  
4 So I withdraw my question.

5 MR. MITTLE: Well, I just need a response.  
6 Because he's called into credit -- it raises an issue  
7 what the Court said. Page 1 of the Order: First the  
8 BOC must satisfy Track A. Then it goes on from there.  
9 It's clearly in the Order about Track A. It's clearly  
10 in the Order about UNE rates. It's clearly in the  
11 Order about public interest.

12 MR. MUNN: Your Honor, that's like --

13 MR. MITTLE: But you said that it wasn't  
14 even in the Order. I do take umbrage with that,  
15 Mr. Munn.

16 HEARING EXAMINER: I'm going to nip this  
17 in the bud right now. I will sustain your objection,  
18 Mr. Mittle, to this line of questioning. You all can  
19 make your legal argument in your post hearing  
20 writings.

21 Mr. Munn, please continue with the next  
22 question.

23 MR. MUNN: Thank you, Your Honor.

24 BY MR. MUNN:

25 Q. Mr. Badal, you were asked yesterday by the

1     Hearing Examiner for any locations in the Antonuk  
2     Track A report that addressed; one, the fact that one  
3     provider or a provider would be sufficient to meet  
4     Track A.

5             Have you had an opportunity to look at the  
6     Antonuk Track A report and identify any places in  
7     there that mentioned --

8             A.     Actually, I found two in John Antonuk -- or  
9     the facilitator's report on Group 5 issues, which  
10    includes Track A.

11            On Page 74, Paragraph C of that report it  
12    states:

13            In its proposed conclusion that Qwest's  
14            unrebutted evidence addressing -- excuse  
15            me, I'm sorry. This is in Paragraph D:  
16            The Ameritech Michigan Order made it clear  
17            that this element of the Track A test is  
18            satisfied where a competing carrier is  
19            serving more than a de minimis number of  
20            end users.

21            And in the second --

22            HEARING EXAMINER:    Wait a second.    So  
23    that's actually on Page 75?

24            THE WITNESS:    I have it on Page 74, Your  
25    Honor.

1 HEARING EXAMINER: Okay, but it is the  
2 proposed conclusions?

3 THE WITNESS: Yes.

4 HEARING EXAMINER: All right, sir. And  
5 the other place?

6 THE WITNESS: Actually, it's not in the  
7 D, proposed conclusion, Your Honor. It's D. Then  
8 there's Paragraph 1, market share of competing  
9 providers, and it's still in discussion.

10 HEARING EXAMINER: Okay. D-1 then.

11 THE WITNESS: D-1.

12 HEARING EXAMINER: All right, sir. Thank  
13 you.

14 THE WITNESS: Then on Page 80 of the same  
15 report in the -- it appears to be the beginning of the  
16 third paragraph, and that would be still probably --  
17 well, okay. In Paragraph 3, it's a long paragraph:

18 Qwest's business/residential allocation  
19 was certainly unsophisticated, but it too  
20 has been used before by the FCC in a  
21 Section 271 context. It will serve here  
22 provided that there is other substantial  
23 evidence of record to support the  
24 conclusion that any residential service at  
25 all is being provided.



1 MR. MUNN: Thank you, Mr. Badal. I have  
2 no further questions, Your Honor.

3 HEARING EXAMINER: Thank you. Now,  
4 Mr. Munn, is there anything left outstanding for me as  
5 far as wanting a reference cite?

6 MR. MUNN: We are --

7 HEARING EXAMINER: There's the 60  
8 percent.

9 MR. MUNN: And we have taken care of  
10 that, I believe.

11 HEARING EXAMINER: The FCC rule that I  
12 wanted that had to do with when people get new  
13 numbers.

14 MR. MUNN: That was the Data Request 9  
15 that I handed out to you and everyone.

16 HEARING EXAMINER: Oh, this morning?

17 MR. MUNN: Correct.

18 HEARING EXAMINER: I thought that was the  
19 7 percent nationwide. No?

20 MR. MUNN: No.

21 HEARING EXAMINER: All right.

22 MR. MUNN: That was for the 60 percent  
23 utilization rate where we say FCC rules require a  
24 provider to reach 60 percent utilization and be  
25 (inaudible) to exhaust the existing telephone numbers

1 prior to requiring additional numbers within any given  
2 rate center. Then the cite is there.

3 HEARING EXAMINER: All right, sir.

4 MR. MUNN: Then there would be where in  
5 the Antonuk Orders that it addressed the one provider.

6 Yesterday we did the Ameritech Michigan  
7 104 for the FCC addressing it.

8 What we still have outstanding to get to  
9 you in response to the Bench request is the most  
10 recent listing of wire-line, CLEC. You had asked for  
11 the interconnection agreements. That's being gathered  
12 as we speak. I hope to have that later today. If  
13 not, we will submit it to you and all parties,  
14 certainly this week.

15 HEARING EXAMINER: Okay. Let me clarify.  
16 When you say give me the agreements, I don't want the  
17 actual agreement. I just want the number.

18 MR. MUNN: Right. I'm sorry. We are  
19 talking about a one- or two-page document that will  
20 identify the carriers.

21 HEARING EXAMINER: Very good.

22 MR. MUNN: Actually, since you had asked  
23 for facilities-based, my understanding of each of  
24 these agreements is that they are not actually going  
25 to say this is a facility-based agreement. We can

1 also provide an updated version of what we did in the  
2 multi-state which will identify -- of these carriers  
3 who have agreements some of them may not be buying  
4 anything from Qwest. Some of them may be buying co-lo  
5 (sic), some of them may be buying (inaudible), and it  
6 will identify what they're doing.

7 HEARING EXAMINER: All right, sir. Thank  
8 you. I wanted to make sure.

9 MS. REILLY: Ms. Hurst, I hate to open up  
10 a can of worms so early in the morning. But with  
11 respect to what Mr. Munn just proposed in response to  
12 your Bench request, when that material was presented  
13 by Qwest at the multi-state, there was quite a bit of  
14 back and forth between Qwest and the other parties on  
15 the accuracy of that. There was an opportunity to  
16 examine that material. Several carriers ended up  
17 being removed from that material as a result of  
18 inquiries by the other parties.

19 If the materials as requested is going to  
20 be provided by Qwest, I think the parties are going to  
21 need an opportunity to examine it, perhaps through  
22 discovery and respond to it.

23 Quite simply put, the material as it was  
24 presented appeared to inflate the number of carriers.  
25 By the end of the process that had been corrected.

1 HEARING EXAMINER: Well, aren't we going  
2 to get to that, Ms. Reilly, with your witness?  
3 Hasn't your witness had a chance to review all of the  
4 super secret responses and is going to be able to tell  
5 us on the bases of the survey how many  
6 facilities-based carriers there are here in New  
7 Mexico?

8 MS. REILLY: Well, unless I misunderstood,  
9 Ms. Hurst, you were asking the company to present you  
10 with a list.

11 HEARING EXAMINER: I did. But what I'm  
12 saying is haven't you looked at the past information?  
13 I'm not saying you won't have a right to look at the  
14 new information. I'm trying to get as much  
15 information for the Commission to have a complete  
16 record.

17 Isn't Qwest the one that does these  
18 interconnects -- to my knowledge, the way it operates  
19 around here, Qwest is the one that files the  
20 interconnection agreements. Generally, it's not the  
21 CLEC that does that. I just asked him to provide a  
22 list of current --

23 MS. REILLY: I understood, Mr. Munn, that  
24 there would be some Qwest input into that list to say  
25 who's doing business, et cetera. We are concerned

1 about those characterizations being accurate.

2 MR. MUNN: Excuse me. Your Honor, may I  
3 suggest a solution here? It's my understanding that  
4 the Commission would have to approve each  
5 interconnection agreement.

6 To avoid any problems that Ms. Reilly may  
7 perceive with us responding to your request, I think a  
8 suggestion would be the request could be directed at  
9 Staff to simply provide a list of the approved  
10 interconnection agreements in the state. That way we  
11 don't have a Staff objection to their own document.  
12 And I think it will be a more expeditious way to move  
13 through the process.

14 Also, I would offer we cannot provide the  
15 information of who is buying what. I was trying to  
16 address your concern of the facilities-based. I'm not  
17 trying to create a problem, but just trying to respond  
18 to your request.

19 So alternatively, we could provide the  
20 list, just have the names of the providers and not  
21 list what they are providing, if that is acceptable to  
22 you. We will do whatever you want us to do.

23 HEARING EXAMINER: I appreciate that,  
24 Mr. Munn. That was sort of the whole point, to try to  
25 get as much information about what CLECs are providing

1 here.

2 My specific question couldn't be answered  
3 by your witness yesterday as to whether or not he knew  
4 the number of the agreements nor if there were any  
5 facilities-based carriers.

6 I think at this point I'll put my request  
7 on hold because I don't necessarily want to add a  
8 protracted nature to the proceeding that it doesn't  
9 currently have.

10 I'll see whether or not I can get this  
11 evidence from either the AT&T witness or from the  
12 Staff witness.

13 MR. MUNN: And Your Honor, I would  
14 suggest that as of April this information is already  
15 in the multi-state record for April. So you can view  
16 it at that snapshot in time as well. You will have  
17 that information.

18 HEARING EXAMINER: Thank you.

19 MR. WITT: From AT&T's standpoint, it  
20 seems like there is a difference between questioning  
21 the accuracy of data provided by Qwest on the one hand  
22 and providing contrary data on the other. I think  
23 that's the distinction that we are trying to make  
24 here. Thank you, Your Honor.

25 HEARING EXAMINER: All right. So we are

1 going to go back around, then, one more time.

2 Mr. Witt, any further questions.

3 MR. WITT: I have no further questions of  
4 this witness.

5 HEARING EXAMINER: Thank you.

6 Mr. Mittle?

7 MR. MITTLE: I have just a few.

8 HEARING EXAMINER: All right, sir.

9  
10 RECROSS-EXAMINATION

11 BY MR. MITTLE:

12 Q. I have a couple of questions about the  
13 Albuquerque Journal article that cites John Clark,  
14 general manager of Cricket, New Mexico.

15 Have you ever met Mr. John Clark?

16 A. No, I have not.

17 Q. Did you ask Mr. John Clark to appear at this  
18 hearing today?

19 A. No, but I talked to the Vice-President for  
20 marketing who is above Mr. Clark in his Albuquerque  
21 office.

22 Q. Did he volunteer to appear here today?

23 A. He needed permission from the public affairs  
24 office of Cricket. I had communication with that  
25 person who is actually an old acquaintance of mine.

1 Her name is Laurie Etkins (sic) and she used to work  
2 for Sprint when I worked for AT&T.

3 She followed up our communication with an  
4 interesting e-mail message saying that since Cricket's  
5 long distance service will compete directly with our  
6 long distance service, they don't see why Cricket  
7 should stand in front of this group in support or make  
8 any statements that would help us in any way.

9 Q. Did your attorney try to subpoena this person  
10 to appear?

11 A. No, we did not.

12 Q. Did you make a Motion to the Commission to  
13 ask that they be required to disclose any information  
14 that might confirm or deny the numbers that you  
15 represent?

16 A. Actually, we requested that -- I'm trying to  
17 remember his name, Steven Reifschneider, who was,  
18 again, Vice-President of Marketing in the four-state  
19 area located in Albuquerque, and sign an affidavit  
20 affirming exactly what Cricket has been saying  
21 publicly.

22 That is -- at that time he checked back  
23 with his public affairs office and that got us in the  
24 cycle of communication with the public affairs office  
25 at Cricket. And they decided not to.



1 Q. Well, part of this hearing today was  
2 precipitated by Qwest filing a Motion asking the  
3 Commission to require certain carriers to respond to  
4 certain information about their residential and  
5 business access.

6 Is that correct?

7 A. Yes. We filed a Motion to Compel that was  
8 sent to -- a message from the Commission was sent to  
9 the CLECs operating in the state -- or had tariffs  
10 operating in the state -- to provide the information  
11 as to their provision of residential and business  
12 services here in the State of New Mexico.

13 Q. And did you at any time -- not you  
14 specifically, but Qwest, file a Motion with the  
15 Commission asking Leap to respond to any inquiries  
16 that Qwest might have in connection with Track A?

17 A. No. Since this communication with Cricket  
18 that we had was pretty recent we didn't think it would  
19 be timely to involve ourselves with the rigmarole of  
20 their denial and our insistence, and on and on.

21 Q. Just so the record is clear, wireless  
22 carriers do not qualify under Section 271 Track A?

23 MR. MUNN: Your Honor, I'll object to the  
24 extent that calls for a legal conclusion or at least  
25 mischaracterizes.

1           The term wireless is vague. I mean,  
2       cellular versus broadband PCS is the distinction drawn  
3       by the FCC. I think they are all wireless.

4       BY MR. MITTLE:

5           Q.     Okay. So cell phones don't qualify for  
6       purposes of Track A.

7                     Is that correct?

8           A.     That is my understanding. But again, the FCC  
9       has stated in several instances where broadband PCS  
10      would qualify.

11          Q.     Right. And the primary Order that you rely  
12      on is the second Louisiana Order where they referred  
13      to PCS's.

14                    Is that correct?

15          A.     I believe it does in the Louisiana Order and  
16      I think there was some mention in the Michigan Order  
17      as well.

18          Q.     And the Louisiana Order effectively denied  
19      SBC's Application to enter the long distance market?

20          A.     They did deny BellSouth or is it -- SBC or  
21      BellSouth. I think it was BellSouth's request for 271  
22      approval.

23                    But their refusal was based on other than  
24      having a broadband PCS provider qualify for Track A or  
25      under Track A. In that order they state quite

1 emphatically, I think, that broadband PCS could  
2 qualify, but that BellSouth didn't.

3 Q. Right. So no party has ever had to contest  
4 that Order of whether PCS qualifies because there  
5 never was a party that had standing?

6 A. That's correct.

7 MR. MITTLE: Thank you.

8 HEARING EXAMINER: Thank you, Mr. Mittle.  
9 Ms. Reilly, any questions of the witness.

10 MS. REILLY: I have a few.

11  
12 RECROSS-EXAMINATION

13  
14 BY MS. REILLY:

15 Q. Good morning, Mr. Badal.

16 A. Good morning, Ms. Reilly.

17 Q. The Hearing Examiner asked you for a cite  
18 when you were discussing the concept of de minimis.  
19 You cited to the Ameritech Michigan Order at Paragraph  
20 75 and 78.

21 Do you recall that?

22 A. Yes, I do.

23 Q. And the Ameritech Michigan Order at Paragraph  
24 75 states that the existence of a carrier's tariff is  
25 not sufficient to satisfy Track A, but, rather,

1 competitors must actually be in the market and  
2 operational.

3 Isn't that right?

4 A. Could you repeat that again, please, the  
5 existence of --

6 Q. That the existence of a carrier's tariff is  
7 not sufficient to satisfy Track A, but rather  
8 competitors must actually be in the market and  
9 operational.

10 Isn't that right?

11 A. I believe so, yes.

12 Q. On another question by the Hearing Examiner,  
13 you stated -- this is from my notes, so it's not an  
14 exact quote but I will warrant that it's pretty close.

15 You stated that I think what Cricket is  
16 saying here is that its customers consider Cricket  
17 service as a replacement.

18 Do you recall saying that?

19 A. Yes.

20 Q. You don't know, do you, how Cricket  
21 determines what its customers think?

22 A. Well, when I read the quotes from Cricket  
23 and, actually, I think it was from the report issued  
24 to the FCC, it stated that 60 percent of customers  
25 perceive that their wireless service is a replacement

1 for wire-line service. So I take that at face value,  
2 that somehow, some way, in some communication with  
3 their customers whether by survey or -- I forget the  
4 marketing term used where they sit down and interview  
5 customers, they would have that understanding from  
6 customers, that's exactly what their customers feel.

7 Q. My question is just as simple as that. You  
8 took it at face value and you are not sure how Cricket  
9 came to that conclusion?

10 A. That's correct.

11 Q. So what we had in our record is your  
12 testimony reciting what you think Cricket thinks about  
13 what Cricket's customers think?

14 A. Yes.

15 Q. And you recall, don't you, that whole  
16 exchange with the Hearing Examiner about the 7 percent  
17 typical first year penetration rate for Cricket?

18 A. Yes.

19 Q. And whether or not that was national or New  
20 Mexico, or maybe it was Tennessee.

21 Do you recall that exchange?

22 A. Yes, I do.

23 Q. Do you know personally anything about the  
24 methodology used by Cricket to come up with that  
25 number?

1 A. No, I don't.

2 Q. And you don't know what market, if any, was  
3 analyzed by Cricket to come up with that number?

4 A. No. I just assumed that they were speaking,  
5 since the state general manager was making that quote,  
6 that he was speaking about his customers here.

7 Q. And you don't know whether Cricket's  
8 methodology might be overly optimistic in an effort to  
9 attract investors, do you?

10 A. Well, in that, I am assured that they have  
11 reached some pretty significant and respectable  
12 penetrations just by way of their ordering of access  
13 lines or telephone numbers, rather. I'm taking at  
14 face value that their estimations are correct.

15 Q. Now, Cricket didn't develop their estimate  
16 for the purposes of presenting their estimate as  
17 evidence in this proceeding or any other legal  
18 proceeding, did it?

19 A. That's correct.

20 Q. And going back to Ms. Hurst's questions about  
21 the meaning of de minimis, you mentioned the FCC has  
22 indicated that de minimis has nothing to do with  
23 quantity but has more to do with viable competition.

24 Do you recall saying that?

25 A. Yes. I think that was clearly stated in

1 Commission Orders.

2 Q. And you cited the Ameritech Michigan Order,  
3 Paragraph 75 and 78 for that proposition.

4 Do you recall that?

5 A. Yes.

6 Q. Mr. Badal, looking at Paragraph 77 of that  
7 same Order, the FCC stated:

8 We recognize that there may be situations  
9 where a new entrant may have a commercial  
10 presence that is so small that the new  
11 entrant cannot be said to be an actual  
12 commercial alternative to the BOC and  
13 therefore not a competing provider.

14 That Order also says that, doesn't it?

15 A. Yes. In that same paragraph it also says  
16 that the FCC does not read Section 271(C), et cetera  
17 to require that a new entrant served its specific  
18 market share in its service area to be considered a  
19 competing provider.

20 Q. But there can be a new entrant whose market  
21 share is so small that it's not a competing provider.

22 Is that right?

23 A. I would say so. I think it's up to the FCC  
24 to determine whether that company is going to be an  
25 actual commercial alternative or no.

1 Q. And the FCC went on to accept Ameritech  
2 Michigan's showing that WorldCom, TCG and Brooks,  
3 three facilities-based carriers, were serving, quote,  
4 more than a de minimis number.

5 Is that right?

6 A. I believe so.

7 MS. REILLY: If I can flip through my  
8 notes, that might be it for me. I think it is.  
9 Thank you.

10 THE WITNESS: Thank you.

11 HEARING EXAMINER: Mr. Badal, we  
12 appreciate it. Thank you very much.

13 THE WITNESS: Thank you very much.

14 HEARING EXAMINER: You are excused, sir.

15 Mr. Munn, would you please make sure that  
16 we have the accurate copies of Qwest Exhibits 1 and 2  
17 for the Court Reporter.

18 If you would like to call your next  
19 witness, sir.

20  
21 DAVID TEITZEL

22 The witness herein, after having been  
23 first duly sworn upon his oath, was  
24 examined and testified as follows:  
25



DIRECT EXAMINATION

BY MR. MUNN:

Q. Would you please state your name?

A. Yes. My name is David Teitzel. It is spelled T-e-i-t-z-e-l.

Q. Mr. Teitzel, who do you work for?

A. I'm employed by Qwest Corporation.

Q. What is your job title there?

A. I'm currently Director of product and market issues at Qwest.

Q. And are you the same David Teitzel who filed Supplemental Direct Testimony on November 16th, 2001, and Rebuttal Testimony on January 11th, 2002, in this docket?

A. Yes, I am.

(Whereupon, two documents were marked  
QWEST EXHIBITS 3 and 4 for identification.)

BY MR. MUNN:

Q. Mr. Teitzel, you have before you what's been marked as Qwest Exhibit 3. I ask you if that is a true and correct copy of your November 16th Direct Testimony with exhibits?

A. (Witness refers to document.) Give me one moment to verify. Yes, it is.

1 Q. And also before you is a document marked for  
2 identification as Qwest Exhibit No. 4. I will ask  
3 you, is that a true and correct copy of your Rebuttal  
4 Testimony and exhibits which was dated January 11th,  
5 2002?

6 A. (Witness refers to document.) Yes, it is.

7 Q. Mr. Teitzel, do you have any corrections to  
8 make to either your Direct or Rebuttal Testimony?

9 A. Yes, I do. Regarding my Supplemental Direct  
10 Testimony, Exhibit 3 --

11 Q. If I could interrupt you briefly, you called  
12 it Supplemental Direct. Can you just explain why it's  
13 called Supplemental Direct instead of just Direct?

14 A. Yes. I also filed Direct Testimony in this  
15 docket in the multi-state proceeding and this is  
16 additional Direct Testimony relative to New Mexico  
17 specifically.

18 Q. So just to avoid confusion regarding the  
19 Direct, you filed in the multi-state; correct?

20 A. Correct. Relative to my Direct Testimony,  
21 which again, is Exhibit 3 for Qwest, at Page 8  
22 starting at Line 1, I would like to strike the  
23 sentence that begins with the words 'for example',  
24 continuing on through the end of that paragraph. The  
25 last word is 'administrator'. That information

1 relates to the E911 information that Mr. Badal also  
2 deleted from his testimony. That's my only change on  
3 that particular exhibit.

4 Then I have several changes on my Rebuttal  
5 Testimony which is marked as Exhibit 4. The first  
6 change would be at Page 14 at Line 18. Here we quoted  
7 a cite from Mr. Ripperger's testimony. Unfortunately,  
8 when we edited this document, we meant to include the  
9 entire cite and just neglected to include that. So I  
10 would like to complete that sentence, if I could, for  
11 the record. Starting at Line 19 it would say words,  
12 quotation marks:

13 The FCC has hinted that it might, under  
14 certain circumstances, allow a Section 271  
15 to satisfy the residential component of  
16 Track A through resale, but it has not  
17 actually done so.

18 End quote. My next change would be at  
19 Page 21 --

20 MS. REILLY: Can you wait a moment so we  
21 can write?

22 THE WITNESS: I'm sorry.

23 HEARING EXAMINER: Go ahead.

24 THE WITNESS: Should I mark up the  
25 original copy and put that into the record?

1 MR. MUNN: Yes. Consistent with what we  
2 did yesterday, I would assume that will be the case.

3 HEARING EXAMINER: Yes, sir. The change  
4 needs to be made on the copy that's going to go to the  
5 Court Reporter.

6 THE WITNESS: Can I do that at a break  
7 and provide that at that time?

8 HEARING EXAMINER: Sure.

9 THE WITNESS: My next change in that same  
10 testimony is at Page 21. This would be at Lines 19  
11 and 20. There I refer to specific Staff data request  
12 response, Set No. 4, No. 2 that was filed on December  
13 17th, 2001. And here I would like to apologize to the  
14 parties. That was a date that our internal mechanized  
15 data request tracking process had noted as the file  
16 date as December 17th. That response was actually  
17 filed on December 31st. So that should be amended to  
18 say, starting at Line 19:

19 Supplemental response to Staff data  
20 request Set 4, No. 2 on December 31, 2001.

21 And I'll make that correction.

22 At Page 27 of that same testimony, I have  
23 a similar correction. This would be at Line 6, again  
24 Page 27. The same issue. We had a date noted  
25 improperly in our mechanized tracking system. That

1 sentence should read, starting at Line 6:

2 6-8, which was filed on December 31, 2001.

3 And my final change is at Page 29 at Line  
4 3. There was just a missing word in that sentence.  
5 In the middle of that sentence it says, 'indeed, the  
6 FCC' -- the word 'found' should be inserted there --  
7 then it should go on to say, 'in the SBC  
8 Arkansas-Missouri Order. I will also make that  
9 correction at the break

10 BY MR. MUNN:

11 Q. Mr. Teitzel, are those all your corrections?

12 A. They are.

13 Q. Keeping in mind those corrections, if I asked  
14 you the same questions today as you were asked in your  
15 written testimony, would your answers be the same?

16 A. They would.

17 MR. MUNN: Your Honor, at this point  
18 Qwest tenders Qwest Exhibit 3, Mr. Teitzel's November  
19 16th Supplemental Direct Testimony and Qwest Exhibit  
20 4, the January 11th, 2002, Rebuttal Testimony of  
21 Mr. Teitzel with exhibits into evidence.

22 HEARING EXAMINER: Are there any  
23 objections to what has been identified as Qwest  
24 Exhibit 3 as corrected by the witness here today?

25 MS. REILLY: Ms. Hurst, it's not exactly

1 an objection, but it's similar to our reservation with  
2 Mr. Badal. The material that Mr. Teitzel deleted,  
3 it's our position, as it was before, that that remains  
4 in the record for other purposes.

5 Other than that, we have no objection.

6 HEARING EXAMINER: All right. As noted  
7 yesterday by me, that's exactly what happens. It  
8 remains in there but in the record. However, the  
9 witness is allowed to amend his testimony.

10 Mr. Mittle, any objection to this?

11 MR. MITTLE: Can I have a continuing  
12 objection to the legal conclusions?

13 HEARING EXAMINER: Yes, sir.

14 MR. MITTLE: Thank you.

15 HEARING EXAMINER: Mr. Witt?

16 MR. WITT: No objection, Your Honor.

17 HEARING EXAMINER: All right. Qwest 3  
18 will be admitted into the record.

19 (Whereupon, QWEST EXHIBIT 3 was  
20 admitted into evidence, a copy of  
21 which may be found under separate cover.)

22 HEARING EXAMINER: Is there any objection  
23 to what has been identified as Qwest 4 as amended here  
24 today subject to the continuing objection for legal  
25 conclusions by Mr. Mittle and with the reservation as

1 expressed by the Staff as to what remains in the  
2 record?

3 (No response.)

4 HEARING EXAMINER: Hearing none, Qwest 4  
5 will be introduced into our record as admitted by the  
6 witness on the stand.

7 (Whereupon, QWEST EXHIBIT 4 was  
8 admitted into evidence, a copy of  
9 which may be found under separate cover.)

10 HEARING EXAMINER: Mr. Munn, anything  
11 further?

12 MR. MUNN: Nothing further. The witness  
13 is available for Cross.

14 HEARING EXAMINER: Thank you very much.

15 Mr. Witt, any questions of Mr. Teitzel?

16 MR. WITT: Yes, Your Honor. Thank you.

17  
18 CROSS-EXAMINATION  
19

20 BY MR. WITT:

21 Q. Good morning, Mr. Teitzel.

22 A. Good morning.

23 Q. How are you today?

24 A. Fine. How are you?

25 Q. Just fine, thanks. Let me begin by asking

1 you the same question I asked of Mr. Badal.

2 Can you give me a definition of the phrase  
3 de minimis, please?

4 A. I think Mr. Badal captured accurately how the  
5 term de minimis should be treated in this docket. I  
6 have not seen any particular numerical quantification  
7 of de minimus. I have seen references in FCC Orders  
8 to the fact that to qualify as a competing provider, a  
9 carrier must be active, in the market, offering  
10 service for a fee, et cetera. I've also seen cites to  
11 the effect that there is no specific market share  
12 minimum requirement.

13 So to be honest with you, I've not seen  
14 any particular minimum bar, if you will, that would  
15 quantify that term. The FCC just does not issue that  
16 particular ruling.

17 Q. But you would agree with me that we are  
18 talking about a quantity even if the quantity at this  
19 point is unknown?

20 A. I think de minimis, the literal  
21 interpretation, would have a quantity connotation to  
22 it. But once again, I've not seen a particular number  
23 that has been set as a bar or a gauge to define what  
24 that term means by the FCC.

25 Q. So the answer to the question is yes?



1           A.    Was your question is there a numerical aspect  
2 to the term de minimis?

3           Q.    The question is whether we know the quantity  
4 or not, we still are talking about a quantity.

5                    Would that be correct?

6           A.    I would say it would be a subjective judgment  
7 as to what is a minimum satisfactory level based on  
8 consideration of other factors that I just mentioned.

9           Q.    Well, on Page 4 of your Rebuttal Testimony,  
10 Line 3, actually beginning at Line 1 you say:

11                   According to the FCC, a CLEC is a  
12                   competing provider as long as it is  
13                   actually -- excuse me -- actually in the  
14                   market and operational (i.e., accepting  
15                   requests for service and providing such  
16                   service for a fee).

17                   And, quote:

18                   Serving more than a de minimis number of  
19                   end users.

20                   So would you agree with me that the word  
21 de minimis should be read in terms of a number?

22           A.    Again, I've not seen a particular  
23 quantification issued by the FCC.

24           Q.    No, I'm saying --

25           A.    I think the FCC considers a variety of

1 factors in determining whether competition is viable,  
2 whether a fee is being charged, whether an  
3 interconnection agreement is in place --

4 Q. If I could interrupt you, Mr. Teitzel. I  
5 don't mean to, but I'm really not talking about these  
6 other factors. Granted, maybe they are there. But  
7 what we are saying here is is the phrase de minimis  
8 number an appropriate standard for determining whether  
9 or not the Track A -- whether or not Track A  
10 compliance has been obtained?

11 A. And I don't mean to be evasive. I have  
12 responded that's one of many standards the FCC  
13 considers. They look at a variety of issues,  
14 including are there sufficient quantities in the  
15 market, all factors being considered, to qualify CLECs  
16 as being competing providers.

17 Q. I'm not going to give up on this one,  
18 Mr. Teitzel. What I'm saying, and I'm just asking you  
19 whether you agree with me or not, this phrase de  
20 minimis to be interpreted in terms of a number. If  
21 you don't agree with me, that's fine. But I would  
22 like to know whether you agree with me on that.

23 A. I would agree that the FCC will look at the  
24 quantities, the numbers, if you will, of access lines  
25 being served by CLECs as a consideration in

1 considering Track A applications, one of many.

2 Q. I'm sorry?

3 A. One of many considerations, I might add.

4 Q. This is really a very simple question,  
5 Mr. Teitzel. I am asking you whether the words de  
6 minimis should be interpreted in terms of a number.  
7 I'm not looking for other factors which the FCC may or  
8 may not consider here. I am simply asking you a very  
9 direct question.

10 Should the phrase de minimis be  
11 interpreted in terms of a number? If you don't agree  
12 with that, please say no. If you agree with that,  
13 please say yes.

14 A. I believe I responded a moment ago by saying  
15 that a number is something the FCC will look at when  
16 they consider access lines served by a CLEC. So the  
17 answer to that is yes, they will look at the number of  
18 access lines in making that determination. It is one  
19 of several factors and I would stand by that response.

20 Q. I still don't know whether you agree with me  
21 or not.

22 A. I can try to rephrase. The FCC will look at  
23 the number of access lines served by a CLEC or a group  
24 of CLECs in a particular state in assessing whether  
25 all the Track A guidelines are satisfied. They will

1 look at that factor as well as many other factors.

2 Again, the FCC has not defined in any  
3 order that I have seen either in which they have  
4 accepted or rejected an Application what that  
5 particular number is.

6 Q. Again, Mr. Teitzel, I'm not saying that  
7 that's part of this question. Maybe if I can redirect  
8 you back to your testimony -- and this again is your  
9 Rebuttal Testimony on Page 4 beginning with Line 1 --  
10 and actually I'd like to focus on Line 3, where you  
11 quote from the Ameritech Michigan Order in Paragraph  
12 75, the phrase -- and it's a very limited phrase by  
13 the way. You say, 'serving more than a de minimis  
14 number of end users'.

15 Is it appropriate when examining the  
16 phrase de minimis to look at a number?

17 A. I apologize if I'm misinterpreting your  
18 question but I thought I responded. I said the FCC  
19 will look at a number, and I'll stress the phrase  
20 number of CLEC access lines served in a particular  
21 state in assessing a Track A application. Yes, they  
22 will look at a number.

23 Q. Thank you. This could take a long time.  
24 Now, Mr. Teitzel, if I can go back to your  
25 Supplemental Direct Testimony, please. On Page 7

1 beginning at Line 1 toward the end of that line the  
2 sentence begins:

3 In confidential Attachment E the number of  
4 resold residential access lines in service  
5 is reported by City and wire center as of  
6 September 30th, 2001, and reflects a total  
7 of 1,829 resold residential lines in  
8 service as compared to total residential  
9 lines in service as of April 30th, 2001,  
10 of 3,064, as shown in Attachment A.

11 Have I read that correctly?

12 A. You have.

13 Q. So reflecting again my passion for simple  
14 arithmetic, that would reflect a decrease in the  
15 number of resold lines, would it not?

16 A. It would.

17 Q. Do you recall yesterday, I believe you were  
18 present, when I was asking questions of Mr. Badal and  
19 he indicated that at the present time a good estimate  
20 of the number of residential lines in the state was  
21 approximately 600,000.

22 Do you recall that particular number?

23 A. Yes, I do.

24 Q. Assuming for a moment that the number of  
25 resold lines within the state, as you have reflected

1     it here, is hovering in the neighborhood of 2,000  
2     because, again, it's my nature to be generous.

3           A.     Thank you.

4           Q.     Would you tell me, please, if I'm correct  
5     here. It seems to me that if there are 2,000 resold  
6     lines in the state out of a total number of  
7     residential lines of 600,000, that percentage of  
8     resold lines would be a fraction of 1 percent.

9                     Would I be correct there?

10          A.     It would be less than 1 percent. I believe  
11     that is correct.

12          Q.     Okay. Now, this is going to be a very simple  
13     question, Mr. Teitzel. It's not going to be  
14     complicated at all. I certainly don't mean it to be  
15     complicated. But if it's a fraction of 1 percent,  
16     would you say that that is perhaps de minimis?

17          A.     I would disagree with that because I don't  
18     think that the number of access lines, in your example  
19     2,000, is a de minimis number.

20                     I think, considering all factors the FCC  
21     would look at again, the FCC would consider that to be  
22     more than de minimis.

23          Q.     Thank you very much. Moving back to your  
24     Supplemental Direct Testimony to the place that I was  
25     referring to before, that would be Page 7, Lines 1

1 through -- let's extend it out to Lines 1 through 9.

2 If I can get my arms around this part of  
3 your testimony, it seems to me that we have a decrease  
4 in the number of access -- excuse me -- in the number  
5 of resold residential lines from approximately 3,000  
6 to something slightly less than 2,000. Yet, at the  
7 same time, we have an increase in the number of CLECs  
8 selling those resold lines from -- let's see here.  
9 Was it five on Line 1 to nine on Line 6?

10 Is that correct?

11 A. That is correct. But let me qualify that  
12 just a bit, if I could. The nine includes two pseudo  
13 CLECs or PCLECs who were being used for the OSS  
14 testing purpose.

15 When this testimony was filed, I was not  
16 one of the designated Qwest employees who had access  
17 to the knowledge around who those CLECs were. Only a  
18 very limited number of employees can have that  
19 information to maintain the integrity of the ROC OSS  
20 testing process.

21 On December 13th an emergency meeting of  
22 the ROC administrative group, I was designated as one  
23 employee who could have that information. With that  
24 information I was able to revise this number down to  
25 seven, and I did so in my Rebuttal Testimony.

1 Q. Thank you. Now, excuse me, you revised that  
2 down to seven where?

3 A. It's in my Rebuttal Testimony.

4 Q. I could have sworn I read your Rebuttal  
5 Testimony, Mr. Teitzel. I apologize. Can you tell me  
6 where approximately?

7 A. Just give me a moment and I can find the  
8 page. (Witness refers to document.)

9 The reference I was recalling was at Page  
10 21. Beginning at Line 17, I talked about the revision  
11 in the quantity of resold residential lines in New  
12 Mexico as being 1,791. That was found in a response  
13 to Staff's data request Set 4 No. 2 which was filed on  
14 December 31st, 2001.

15 In that Staff data request the 1,791  
16 number was identified and the number of CLECs were  
17 identified as seven as contributing to that number.  
18 That was the passage I was recalling.

19 Q. So it's not actually in your Rebuttal  
20 Testimony. It's in one of the exhibits that you cite  
21 in your Rebuttal Testimony?

22 A. That's more accurate.

23 Q. Okay. Thank you, because, gosh, I thought I  
24 was losing my mind there.

25 A. I'm sure that's not the case.



1 Q. Oh, no, I do misplace it every now and then.  
2 Getting back, please, to -- oh, excuse me. Let me do  
3 one follow-up question.

4 You say that you were designated as one of  
5 the employees of Qwest who would be able to know the  
6 identity of the two pseudo CLECs.

7 Can you tell me how that designation  
8 occurred or how that change in your status occurred?

9 A. I can tell you there was an emergency meeting  
10 after hours on December 12th between Nancy Lubamersky  
11 and members of the ROC test advisory group,  
12 administrative group which again is the entity  
13 unaffiliated with Qwest. That entity must designate  
14 all Qwest employees who have access to that  
15 information.

16 And the reason that meeting happened was  
17 because I was being asked to provide information that  
18 I practically could not. I did not have the knowledge  
19 without being designated as one of the employees who  
20 could see that information.

21 And I received a call on December 13th  
22 confirming that I could have the information and was  
23 provided the information on that date. Again, the  
24 reason that the number of employees are strictly  
25 constrained is to maintain the integrity of the ROC

1 testing process to assure the service orders flow  
2 through the process. If they are test orders, they  
3 are treated like any other service order from any  
4 other CLEC.

5 Q. So the process occurred as follows: You  
6 received some Interrogatories from whom we know not,  
7 but from someone. You indicated that you couldn't  
8 answer the Interrogatories based on your current  
9 knowledge. So Qwest asked for and received an  
10 emergency meeting of the ROC administrative -- could  
11 you tell me again the name of that?

12 A. I'm not sure what the formal title of the  
13 group is but it's the ROC administrative group and I  
14 believe that KPMG is the administrator of that  
15 process.

16 Q. Okay. Thank you. Getting back to where I  
17 was originally, and I think I probably will be taking  
18 up dentistry after this Mr. Teitzel because I think I  
19 could waive through a lot of the courses there.

20 On the -- on Page 7 of your Supplemental  
21 Direct Testimony, again, Lines 1 through 9, we are  
22 seeing a trend here. It seems to me from your Direct  
23 Testimony, a trend can be determined in that we are  
24 seeing a reduction in the number of resold access  
25 lines and an increase in the number of CLECs reselling

1 those lines.

2 Is that correct?

3 A. That is true.

4 Q. On the other hand, we also have one  
5 particular unknown -- unnamed, excuse me, not unknown,  
6 unnamed CLEC who is reselling a good 75 to 80 percent  
7 of those lines.

8 Am I correct?

9 A. I would accept your percentage subject to  
10 check, but it's in that range.

11 Q. Okay. Would you characterize this as vibrant  
12 competition in the resale marketplace?

13 A. I would characterize that as actual  
14 competition, as competition from at least one CLEC who  
15 is providing service for a fee actively in the state  
16 at more than a de minimis level. So I strongly  
17 believe that satisfies Track A requirements.

18 Q. So your position and Qwest's position here is  
19 that an increasing number of CLECs fighting over .3  
20 percent of the marketplace is actual competition?

21 A. Yes, it is.

22 Q. Thank you.

23 A. And let me augment that answer, if I could.

24 Q. You don't need to, but if you would like to.

25 A. I would like to, if I might.

1 Q. By all means.

2 A. Let me also say that in Arkansas, SBC pointed  
3 to one particular competitor in that state as serving  
4 well under 5,000 access lines. That was essentially  
5 their evidence they were on Track A. I can also tell  
6 you that one competitor is no longer taking orders  
7 from new customers. They have, in essence, frozen  
8 their service, capped it. By definition that is going  
9 to be a declining base in that state. With that  
10 knowledge the FCC approved that Application.

11 I think there is a parallel here that it  
12 is more than de minimis and it's sufficient.

13 Q. Okay. Thank you. But now, if the trend in  
14 New Mexico continues, it seems to me eventually we are  
15 going to have 25 CLECs arguing over a hundred lines.

16 Is that a possibility in your mind?

17 A. I would respond by saying I honestly don't  
18 know what the future may bring. The economy may  
19 rebound in the near future and this trend may reverse.  
20 I honestly don't know.

21 Q. Okay. Thank you, Mr. Teitzel. Now, if I  
22 could move now to your Rebuttal Testimony. Beginning  
23 on Page 27, you indicate on Line 16, Ms. Roth has  
24 seriously misinterpreted information regarding UNE  
25 loops in service in New Mexico.

1 Did you find that place?

2 A. I did.

3 Q. Okay. You go on to talk in terms of  
4 stand-alone unbundled loops as distinguished from  
5 what's called the UNE platform of packaged loops.

6 Am I correct?

7 A. That is correct.

8 Q. Okay. Did Qwest ever provide the number of  
9 unbundled stand-alone -- excuse me, stand-alone  
10 unbundled loops in the course of these proceedings to  
11 any party?

12 A. You are referring to these proceedings being  
13 the Track A proceedings up to this point?

14 Q. No, excuse me. I'm talking about these  
15 immediate -- the immediate hearing that we are at  
16 today and the testimony and exhibits that have been  
17 offered here by Qwest, including your own two  
18 exhibits.

19 A. No, because that information was not used in  
20 a response that I supplied to the Staff data request.  
21 I recall it was Set 4 but I don't recall the  
22 particular number, in which they asked for an  
23 approximation of what we believed the market share to  
24 be. The stand-alone UNE loop quantity was not used in  
25 that calculation. Therefore, there was no data

1 provided in that. It was not used. Only UNE platform  
2 loops were used in that calculation.

3 Q. Now, I'm looking at a copy of Qwest's  
4 response to Staff Interrogatory 4-11, so that would be  
5 the fourth Set, the eleventh question. If I may  
6 approach the witness to save time -- I apologize but  
7 I don't have multiple copies of this (indicating).

8 A. I have that.

9 Q. Reading the first line, could you tell us  
10 what that first line is?

11 A. Yes. The first line states UNE platform  
12 loops in service. And that number is shown as 3,925.

13 Q. Thank you, Mr. Teitzel. Then moving down --

14 HEARING EXAMINER: Let's go off the  
15 record a second. Yours is non-pink but his is pink.

16 (Whereupon, a brief discussion was  
17 held off the record.)

18 HEARING EXAMINER: Back on the record. I  
19 was trying to ascertain off the record if we were  
20 getting into confidential information, and we are not.

21 So Mr. Witt, please proceed.

22 MR. WITT: Thank you, Your Honor.

23 BY MR. WITT:

24 Q. Now, again, the first line of Attachment A  
25 indicates that the UNE platform loops and services,

1 3,925?

2 A. That is correct.

3 Q. And you just got through reading that?

4 A. Yes.

5 Q. If you will, please just move down five cells  
6 on that table, the next -- that goes to resold access  
7 lines and specifically residential resold access  
8 lines.

9 Am I correct?

10 A. You are.

11 Q. And that number is 1,829?

12 A. That's correct.

13 Q. And then moving down to three -- excuse me --  
14 three cells from there, the header on that says, total  
15 Qwest UNE and resold lines. I take it 'fac' would be  
16 facilities-based CLEC lines.

17 Am I correct?

18 A. You are correct.

19 Q. And that total for residential service is  
20 9,145.

21 Is that also correct?

22 A. That is also correct.

23 Q. So is there any place here on this document  
24 that you've provided stand-alone unbundled loops in  
25 service in New Mexico?

1       A.    We have not because, once again, stand-alone  
2 unbundled loops were not used in this calculation or  
3 this summation.

4       Q.    Well, I guess I'm wondering, then, why you  
5 are so hard on Ms. Roth for not using stand-alone  
6 unbundled loops when, in fact, you haven't provided  
7 the information to her in any of your previous  
8 documents or supporting attachments?

9       A.    I guess hard is a subjective term. I did  
10 point out that she misrepresented --

11       Q.    I think you say she seriously misrepresented.

12       A.    She did misrepresent what this information  
13 says. Line 1 clearly says this is UNE platform loops  
14 in service. The data supplied in the April quantities  
15 included both UNE stand-alone and platform quantities.  
16 I think it's fairly plain what this information is and  
17 is not. And Ms. Roth's conclusion is not correct. In  
18 fact, it's seriously incorrect.

19       Q.    Her conclusion, notwithstanding, it seems to  
20 me that if Qwest hasn't provided this information and  
21 you admitted that it's not been provided to anyone  
22 within the four corners of these proceedings, then I  
23 guess I'm wondering how on earth anyone can be  
24 expected to utilize information which has not been  
25 provided?



1           A.    I'm sorry, I have to take exception to that.  
2   In this data request response which I developed, I  
3   supplied information to the Staff that was responsive  
4   to Staff's request as well as back-up documentation as  
5   to how those numbers were derived.

6                    If AT&T and Ms. Roth, in this case, took  
7   this information and interpreted it for her purposes,  
8   did not ask, to my knowledge, any data requests of me  
9   as to what the stand-alone UNE loop number was. It  
10   was not use for this purpose.

11          Q.    Let's look at what exactly the question is  
12   here. I'm reading directly from Staff Request No. 11  
13   in Interrogatory Set No. 4. It says:

14                   State what percentage of the residential  
15                   lines in New Mexico are served by CLECs  
16                   through any means of competitive entry and  
17                   fully identify the sources of your  
18                   information and the relevant time frame  
19                   for any sources of your information.

20                   It seems to me that if stand-alone UNE  
21   loops are a part of the means of competitive entry or  
22   if they are any means of competitive entry, then they  
23   should have been included here.

24          A.    Mr. Witt, there is some history here. It  
25   goes back to the multi-state proceeding. In that

1 proceeding in the data I supplied there, UNE  
2 stand-alone loops were not characterized as being a  
3 form of residential competition. We didn't attribute  
4 any of those loops to residence, nor have I done so  
5 here. So I've merely been consistent with what I've  
6 done with that information up to this point.

7 I might add the reason that we did not  
8 report that information into residential and business  
9 categories, when I say that information, I'm referring  
10 to stand-alone UNE loops, when we sell those services  
11 to a CLEC, they are sold as a wholesale service.  
12 There's no particular class of service associated with  
13 that. So we have no internal means of tracking  
14 whether a stand-alone UNE loop is residence, business,  
15 Centrex or any other class of service.

16 Q. Very well. Now, let's ask, first of all, let  
17 me ask, is it reasonable to assume that a UNE loop --  
18 excuse me, a stand-alone UNE loop is not going to be  
19 used to provide residential service?

20 A. It's an assumption that I made in the  
21 multi-state proceeding in all seven states.

22 Q. And would that assumption be based on the  
23 price of the stand-alone unbundled loop as compared to  
24 the price of residential service?

25 A. It's based on your belief of what's happening

1 in the marketplace. We believe that the predominant  
2 form of competition is resale and to a lesser degree  
3 through facility bypass means like cable telephony or  
4 shared tenant service and other forms of competition.

5 Q. So what you are telling me is if the  
6 predominant method of competition in the residential  
7 market is by resale and the number of resold lines in  
8 the state is some 2,000, then it seems to me that it's  
9 logical to assume that the number of unbundled network  
10 elements -- excuse me, unbundled loops that are being  
11 used to provide residential service would be  
12 considerably less than 2,000.

13 Am I correct there?

14 A. As I sit here today, I could not honestly say  
15 that any unbundled loops were being used to serve  
16 residential customers in New Mexico today.

17 Q. Okay.

18 A. I have not testified to that effect. I just  
19 don't know.

20 Q. But if Ms. Roth is looking at the decline in  
21 residential competition within the state and she has  
22 not included unbundled network elements stand-alone  
23 UNE loops, which are, as far as you are concerned, not  
24 used for that, then why is your criticism of her  
25 approach justifiable?

1           A.     I criticize Ms. Roth because my reading of  
2 her testimony was that she was making a point or a  
3 case that CLEC competition in the broad sense,  
4 residential and business, was trending steeply  
5 downward. And that simply is not true.

6           Q.     But we have already established that the  
7 number of resold lines in the State of New Mexico is  
8 declining.

9                     Is that correct?

10          A.     Residential resold lines; that is correct.

11          Q.     Sure. And you've also stated that resale is  
12 the primary method of competition for residential  
13 service in the State of New Mexico.

14                     Is that correct?

15          A.     Today that is correct for residential  
16 service.

17          Q.     So I guess I'm missing something here as to  
18 why you would criticize somebody for asserting that  
19 there is a decline in residential competition within  
20 the state.

21          A.     I think we are mixing comparisons here. My  
22 point again was that I read Ms. Roth's testimony to  
23 maintain that local exchange competition was steeply  
24 declining, broadly, residential and business combined.  
25 And that is not the case.

1 Q. Okay. Perhaps we are talking at each other  
2 instead of to each other. I will back off on this.

3 HEARING EXAMINER: Mr. Witt, how are we  
4 doing?

5 MR. WITT: Actually, Your Honor, I have no  
6 further questions at this point. Thank you very much,  
7 and thank you, Mr. Teitzel.

8 THE WITNESS: Thank you, sir.

9 HEARING EXAMINER: We will take a  
10 ten-minute recess at this point.

11 (Whereupon, a brief recess was  
12 taken.)

13 HEARING EXAMINER: Back on the record  
14 from a recess.

15 Mr. Mittle, I believe you have  
16 Cross-Examination questions of the witness.

17 MR. MITTLE: Thank you, Madam Hearing  
18 Examiner.

19  
20 CROSS-EXAMINATION

21 BY MR. MITTLE:

22 Q. Good morning, Mr. Teitzel.

23 A. Good morning, sir.

24 Q. I would like to follow up on something you  
25 just said with Mr. Witt. You can correct me, but I

1 believe it's Qwest's position in New Mexico the  
2 predominant method of competition is resale and not in  
3 facilities-based.

4 Is that correct?

5 A. Relative to my testimony, and the focus on  
6 resale in my testimony, that's what I am seeing. Now,  
7 I believe you heard yesterday and again this morning  
8 that Mr. Badal cited PCS information as being a source  
9 of, quote-unquote, facility based competition. So I  
10 think it's a combination from that perspective.

11 Q. Do you think resale is greater than the  
12 number -- resale residential lines is greater than the  
13 facility-based residential lines?

14 MR. MUNN: I object. The question is  
15 vague. Does facilities-based, does that include  
16 Cricket or not?

17 MR. MITTLE: I don't care. You could  
18 answer both ways, if you know, or one way, if you  
19 don't know.

20 HEARING EXAMINER: Mr. Teitzel, let's  
21 take one at a time. Do you believe that the PCS is  
22 included in the facilities-based?

23 THE WITNESS: I believe PCS is a form of  
24 facility-based competition and I believe that the FCC  
25 has found that to be the case also.

1 HEARING EXAMINER: All right. Mr. Munn,  
2 does that clarify the question sufficiently now that  
3 he is including --

4 MR. MUNN: Well, I think it needs to be  
5 clear. That's fine, yes, Your Honor.

6 HEARING EXAMINER: All right. Do you  
7 understand the question, Mr. Teitzel.

8 MR. MITTLE: Could I rephrase it?

9 HEARING EXAMINER: Sir, please.

10 BY MR. MITTLE:

11 Q. The number of residential resale lines Qwest,  
12 using the generous number of Mr. Witt, according to  
13 Qwest, is about 2,000?

14 A. That's correct.

15 Q. And the facilities-based, just the number  
16 assigned to Cricket, would be how many?

17 A. Again, I believe I can help here. In note  
18 one on my Attachment A to response to Staff data  
19 request Set 4, No. 11, it identifies how a number can  
20 be estimated or number of Cricket access lines which  
21 have been used as a substitute for wire-line. That  
22 number as shown in my note one is 2,520.

23 MR. WITT: I object. I think that that  
24 number is based on the Intrado report and I'd like to  
25 make sure that that Intrado report information is

1 excluded, isn't it?

2 THE WITNESS: It is not based on the  
3 Intrado report. It's based on Cricket's.

4 MR. WITT: I apologize. I misheard.

5 THE WITNESS: And then Cricket's estimate  
6 that 7 percent of their customer base had used their  
7 service as a full bypass of the land line.

8 HEARING EXAMINER: Okay. So that 2,520  
9 is a number that you have created based on information  
10 about Cricket?

11 THE WITNESS: It's information from  
12 Mr. Badal's affidavit. Again, this is no note one in  
13 Attachment A to my response to Staff's Set 4, No. 11.

14 HEARING EXAMINER: All right.

15 THE WITNESS: So I'm taking 36,000 times  
16 7 percent to arrive at the number.

17 BY MR. MITTLE:

18 Q. Okay. Did I understand you correctly when  
19 you testified in answer to Mr. Witt's question that  
20 the predominant method of competition in New Mexico is  
21 resale and not facilities-based?

22 A. When I was responding I was thinking of the  
23 context of the question, which I believed was  
24 involving resale and unbundled services. If the  
25 context were expanded to include PCS type service



1 which again the FCC has identified as a form of  
2 facility-based competition --

3 Q. I'm not trying to argue the role of PCS.  
4 What I'm trying to understand is, so if we eliminate  
5 Cricket, which is the only PCS provider that Qwest has  
6 offered any evidence of in this proceeding; is that  
7 correct?

8 A. That's correct.

9 Q. So if we eliminate Cricket, is it your  
10 testimony that the predominant method of competition  
11 in New Mexico is resale and not facility-based?

12 A. If Cricket were not considered, that would be  
13 true.

14 Q. Okay. And the resale numbers, plus or minus  
15 2,000 is an actual number.

16 Is that correct?

17 A. The numbers in my testimony were actual  
18 numbers from our CRIS tracking database.

19 Q. Okay. And does Cricket report to Intrado?

20 A. I do not believe they report to Intrado nor  
21 do I believe they are required to.

22 Q. And you are familiar with Mr. Badal's  
23 affidavit?

24 A. Yes, I am.

25 Q. And in Mr. Badal's affidavit he cites the

1 number of facilities-based residential lines from  
2 Intrado.

3 Are you familiar with that number?

4 A. I am.

5 Q. And that number is 4,796?

6 A. That's my recollection.

7 Q. So given that the predominant method of  
8 competition is resale and not facility, the number of  
9 facility-based lines is greater than the number of  
10 resale lines?

11 A. I would respond by saying I believe Mr. Badal  
12 deleted or redacted his testimony relative to Intrado,  
13 so I don't believe he's supporting that number any  
14 more, nor am I.

15 Q. All right.

16 So if I could direct your attention to  
17 your Supplemental Direct Testimony, Page 5, Lines 20  
18 through 22 --

19 A. I'm sorry, 20 through 22?

20 Q. Yes, sir.

21 A. (Witness refers to document.) I have that.

22 Q. You refer to what's called Qwest's wholesale  
23 service tracking database.

24 A. Yes.

25 Q. Is that the same thing as the customer record

1 information system?

2 A. In this context it is, yes.

3 Q. Okay. Now, if I could turn to Page 2 also of  
4 your Supplemental Direct, starting at Line 2, you  
5 offer a definition of when a CLEC qualifies as a  
6 competing provider.

7 Do you see that?

8 A. Yes, I do.

9 Q. And you put in quotes competing provider and  
10 the phrase serving more than a de minimum number of  
11 end users?

12 A. That's correct.

13 Q. You also use the word operational. And  
14 operational is not in quotes. Is there a reason for  
15 that?

16 A. No particular reason. The context there was  
17 a CLEC needs to be in the market actually serving  
18 customers, billing customers a fee for their service.  
19 That would be the definition, in my mind, of  
20 operational.

21 Q. And do you have a source from where the FCC  
22 used the word operational?

23 A. (Witness refers to document.)

24 Q. I mean, you cite the Ameritech Michigan  
25 opinion. Do you know whether they used it in there?

1           A.     The cite is to that Ameritech Michigan Order,  
2     and I recall the adjective operational providing  
3     service for a fee being there.  If you can give me a  
4     moment, I can try to find the specific.

5           Q.     How about Paragraph 75?

6           A.     Paragraph 75?

7                   MR. MUNN:     Yes.

8                   MR. MITTLE:    Yes.

9                   THE WITNESS:   Mr. Munn, I don't have  
10     that.  Do you have that, please?

11                  MR. MUNN:     (Counsel hands document to  
12     witness.)

13                  THE WITNESS:   Yes.  Paragraph 75.  Would  
14     you like me to read the cite?

15     BY MR. MITTLE:

16           Q.     No.  You have a copy, though?

17           A.     I do.

18           Q.     And these questions go to how you define a  
19     competing provider.  Do you see where the FCC wrote:

20                   Rather, we do not determine that the

21                   minimum the carrier must actually be in

22                   the market and operational, i.e.

23                   accepting requests for services and

24                   providing such service for a fee, although

25                   we did not address whether new entrants

1 must meet additional criteria to be  
2 considered a competing provider under  
3 Section 271(C)(1)(A).

4 Did I read that correctly?

5 A. You did. I see that language.

6 Q. So in your definition, you refer to  
7 operational and you refer to a de minimis number.  
8 What does the FCC mean when they said although we did  
9 not address whether new entrants must meet additional  
10 criteria?

11 A. I would have to respond that I'd be  
12 speculating as to the intent behind their words. I  
13 think we talked today about a variety of criteria that  
14 the BOC must meet when they file a Track A  
15 Application. I think they need to demonstrate -- in  
16 this case Qwest needs to demonstrate that there is at  
17 least one CLEC or CLECs that are actually in the  
18 marketplace offering services to customers that  
19 otherwise would have been Qwest customers.

20 Q. Right. That --

21 A. I think the BOC must meet the checklist  
22 requirements and the other criteria as well in this  
23 Section 271 consideration.

24 Q. So the FCC said that they must actually be in  
25 the market in Paragraph 75 and that's what you said?

1 A. That's correct.

2 Q. Must be operational and that's what you said?

3 A. That's correct.

4 Q. The FCC also said that they might have to  
5 meet additional criteria.

6 Is that correct?

7 A. That is their language.

8 Q. Looking now at Paragraph 78 of the same  
9 Order, Ameritech Michigan, if you could read the first  
10 sentence?

11 A. Paragraph 78 of that same Order in the first  
12 sentence says:

13 In this Order, we need not and do not  
14 reach the question of whether a carrier  
15 that is serving a de minimis number of  
16 access lines is a 'competing provider'  
17 under Section 271(C)(1)(A).

18 Q. And this goes to some of the line of  
19 questioning of Mr. Witt that de minimis refers to a  
20 number of access lines to a number.

21 Is that correct?

22 A. Again, I testified earlier and I will try to  
23 respond as directly as I can. I have not seen any  
24 particular number identified by the FCC. I think  
25 there is not a market share test which would imply

1 some specific minimum threshold. I don't think one  
2 exists.

3 Q. Right. And you are familiar with the recent  
4 case of Sprint, a recent Sprint Communications Company  
5 versus the FCC, are you not?

6 A. I'm sorry. Would you ask that question  
7 again.

8 Q. Yes, have you --

9 A. Are you referring to the DC case?

10 Q. Yes, it's Sprint Communication versus the  
11 FCC.

12 A. Yes.

13 Q. Do you also understand that if the -- if  
14 somebody takes issue, a party takes issue with the  
15 FCC, they can appeal to the courts?

16 A. Yes, they can.

17 Q. So the courts have a higher authority than  
18 the FCC?

19 MR. MUNN: Your Honor, I'll object to  
20 this question. It calls for a legal conclusion about  
21 the jurisdictional nature of the courts. It also  
22 seems to me to be irrelevant but certainly calling for  
23 a legal conclusion.

24 HEARING EXAMINER: Mr. Mittle?

25 MR. WITT: Your Honor, I don't mean to be

1 an interloper here, but when I read Mr. Teitzel's  
2 testimony, it sure reads like a legal brief to me.

3 MR. MUNN: Your Honor, that would  
4 certainly be because Mr. Ripperger's testimony read  
5 like a legal brief so he had to rebut the legal brief  
6 that Mr. Ripperger decided to file as testimony.

7 MR. WITT: I was actually referring to  
8 Supplemental Direct Your Honor.

9 HEARING EXAMINER: Well, I think we have  
10 all discussed this particular issue before. I  
11 believe, as I said yesterday, due to the legal -- not  
12 legal, due to the unique nature of the proceeding, I'm  
13 going to overrule your objection, sir. You can answer  
14 if you know.

15 THE WITNESS: Would you mind asking the  
16 question one more time and I'll attempt to respond.  
17 I'm not an attorney.

18 BY MR. MITTLE:

19 Q. If a party has issue with the FCC, they can  
20 take their complaint to the courts?

21 A. They can.

22 Q. And the DC Court of Appeals entertained a  
23 complaint from Sprint Communications and other parties  
24 in a recent decision on December of 2001?

25 A. They did.



1 Q. And in that opinion, the Court seriously  
2 questioned -- I won't say seriously questioned -- the  
3 Court questioned whether the Commission is reading  
4 Track A to require only a minimal volume of  
5 competition, if they are correct in interpreting that.

6 I didn't state that very well. Can I  
7 restate that?

8 A. Are you citing a specific finding of the  
9 Court and if so, can I read that before I respond?

10 Q. Yes. I'll give you my copy (indicating).

11 A. (Witness refers to document.)

12 HEARING EXAMINER: Where would that be,  
13 Mr. Mittle, so I can look on my copy? I like my copy  
14 better. It's already colored.

15 (Whereupon, a brief discussion was  
16 held off the record.)

17 HEARING EXAMINER: Go ahead Mr. Mittle.

18 BY MR. MITTLE:

19 Q. So are you familiar with the Court's opinion  
20 where they stated if the Commission is correct in  
21 reading Track A to require only a minimal volume of  
22 competition to be present, see Order Section 42, and  
23 that reading is not challenged here, it may reflect a  
24 recognition that the residential market may not be  
25 attractive to competitors even if UNE costs are at the

1 lower end of the TELRIC, assuming it's out of material  
2 range.

3 Do you see that section?

4 A. I do.

5 Q. Do you read that section to mean that the  
6 Court was questioning whether the FCC is correctly  
7 reading Track A to require only a minimal volume of  
8 competition but not addressing that point?

9 A. I'm not an attorney, so I'd have to offer my  
10 opinion of what this says. But in my opinion it  
11 appears to be a remand to the Commission to consider  
12 this issue. The Court is not taking an active opinion  
13 as to whether the FCC is right or wrong, just that it  
14 should be considered once again.

15 Q. If I could now direct your attention back to  
16 the Ameritech Michigan Order, Paragraph 78.

17 A. (Witness refers to document.) I have that.

18 Q. And in Paragraph 78 it refers to carriers as  
19 being an actual commercial alternative to the BOC?

20 A. Give me just a moment, please. (Witness  
21 refers to document.)

22 Yes, I see that language.

23 Q. And is actual commercial alternative, in your  
24 opinion, a word of art? Does it have some special  
25 significance in terms of Section 271 applications?

1       A.     Once again, I'm not an attorney but I'll  
2     offer my opinion as a non-attorney. The commercial  
3     alternative to me means that a competitive or a CLEC  
4     must be actually in the market, present in the market,  
5     offering services for a fee to customers who otherwise  
6     would have been customers of Qwest. It is, in fact, a  
7     commercial alternative for a fee.

8       Q.     And the features and functions that a  
9     competitor must be offering, do you have a definition  
10    of what those are?

11    A.     I don't think that the FCC has found, to the  
12    best of my recollection, that services must be  
13    precisely the same. Only that they are generally  
14    comparable services offered to the same body of  
15    customers.

16    Q.     In your opinion, should an actual commercial  
17    alternative provide long distance?

18    A.     It could do that. It doesn't necessarily  
19    have to do that, but it could.

20    Q.     Right. I'm just asking your opinion.

21    A.     I responded that that could be an  
22    alternative, yes.

23    Q.     Internet access? Well, let's back up. If  
24    they don't offer long distance service, are they an  
25    actual commercial alternative?

1 A. Yes.

2 Q. What about Internet access?

3 A. If we are talking about local exchange  
4 competitors, my response would be yes. I think that  
5 is an alternative.

6 Q. But are they an alternative if they don't  
7 offer Internet access?

8 A. If they offered a service that was packaged  
9 differently without Internet access to residential  
10 local exchange consumers, my position would be yes, it  
11 is an alternative to Qwest's local exchange service.

12 Q. So is an alternative to Qwest's local  
13 exchange offer, they must offer a dial tone.

14 Is that correct?

15 A. A dial tone is part of the basic  
16 functionality of a flat residential line, so I would  
17 say yes.

18 Q. And if a competitor offers a pre-pay -- do  
19 you understand what I mean by pre-pay?

20 A. Yes, I do.

21 Q. Could you please explain to the Commission  
22 what your understanding of pre-pay is?

23 A. A pre-pay would be a payment provided in  
24 advance by a customer for a service that we  
25 subsequently receive. For example, a customer might

1 pre-pay for residential service the 1st of January to  
2 be provided service the remainder of that month.

3 Q. And if a customer is offered service only  
4 through a prepaid plan, do you consider that a  
5 commercial -- an actual commercial alternative to  
6 Qwest's wire-line?

7 A. Yes.

8 MR. MITTLE: Can I go off the record for a  
9 second here, please?

10 HEARING EXAMINER: Sure.

11 (Whereupon, a brief discussion was  
12 held off the record.)

13 BY MR. MITTLE:

14 Q. Mr. Teitzel, are you familiar with the  
15 company Comm South?

16 A. Yes, I am.

17 Q. Do you know what services they offer?

18 A. They offer residential services on a resold  
19 basis in New Mexico.

20 Q. And are they a prepaid plan?

21 A. That's my understanding.

22 Q. Do they offer long distance?

23 A. I believe long distance is blocked with their  
24 offering.

25 Q. Do they offer business?

1           A.     Not to my knowledge. I'm sorry, I stand  
2     corrected. I do show in a confidential attachment  
3     that they are providing some resold services, without  
4     divulging any numbers.

5           Q.     The question went to business. Are they  
6     offering business?

7           A.     I would amend my answer. Our records are  
8     yes.

9           Q.     And do you consider Comm South an actual  
10    commercial alternative?

11          A.     Yes, I do.

12          Q.     And do you know where a person might purchase  
13    Comm South from?

14          A.     I'll respond as I understand your question.  
15    A New Mexico customer could call Comm South's business  
16    offices and order service as they would with the Qwest  
17    business office. My recollection is Comm South  
18    provides service to customers in a variety of  
19    communities in New Mexico.

20          Q.     And are you aware that Comm South offers  
21    their services through such stores known as Fast  
22    Bucks?

23          A.     To be frank with you, I'm not aware of that,  
24    but I would accept that subject to check.

25          Q.     And a company such as Fast Bucks also does

1 pay day loans and car title loans?

2 A. Once again, I don't have personal knowledge  
3 of that.

4 Q. Subject to check, if I told you that the  
5 annual percentage rate that a company like Fast Bucks  
6 charges is 652 percent, would you consider that a  
7 viable alternative to Qwest?

8 MR. MUNN: Your Honor, I'll object to the  
9 question because it assumes facts not in evidence. He  
10 is asking this witness to speculate.

11 MR. MITTLE: I said subject to check, but  
12 I can offer you some evidence.

13 HEARING EXAMINER: Do you want to -- I'm  
14 going to sustain that objection unless you start  
15 again, if you can lay a foundation, Mr. Mittle.

16 MR. MITTLE: Okay. Let's back up.

17 BY MR. MITTLE:

18 Q. So if on Comm South's company's website they  
19 said they don't offer business service, would your  
20 confidential Exhibit DLT-1 be correct or incorrect?

21 A. It is correct. Our billing systems do show  
22 that we are providing this particular service to each  
23 of the CLECs identified there.

24 Q. But it doesn't actually mean they are  
25 offering the service in New Mexico?

1           A.     It did at the time this information was  
2     pulled.  If something has changed subsequent to that,  
3     that would not be reflected here.

4           Q.     Okay.  Then I was asking you a question about  
5     -- I should do this in two parts.

6                     MR. MITTLE:  May I approach the witness,  
7     please?

8                     HEARING EXAMINER:  Sure.

9                     HEARING EXAMINER:  Mr. Mittle, was  
10    Exhibit 2 the Reforma thing that you passed out?

11           MR. MITTLE:  Right.  I didn't offer it.

12                     (Whereupon, a document was marked

13                     AG EXHIBIT 3 for identification.)

14    BY MR. MITTLE:

15           Q.     Mr. Teitzel, I've handed you what's been  
16    marked AG 3.  I represent to you it's from the Comm  
17    South website.

18           A.     I have that.

19           Q.     Do you have any reason to doubt that these  
20    are the products and services that Comm South offers?

21           A.     This is what I see as represented on their  
22    website.  I would testify with cost-of-service that  
23    our billing systems are accurate in this case.  There  
24    appears to be a difference here.  This is their  
25    representation.



1 Q. Okay. Thank you.

2 MR. MUNN: Your Honor, I just have one  
3 point for clarification. Is this being represented as  
4 the entire Comm South website, and the entire places  
5 that you can purchase Comm South service is included  
6 in AG 3 or are these excerpts?

7 MR. MITTLE: That's going to be 4. AG 3  
8 is just the one page. I stapled it. All I'm  
9 representing on AG 3 is this is  
10 [www.commsouth.com/products.html](http://www.commsouth.com/products.html), which is from the  
11 Comm South website. Then you click on their little  
12 icons for products and services.

13 HEARING EXAMINER: So the answer, then,  
14 to Mr. Munn's question is?

15 MR. MITTLE: No.

16 HEARING EXAMINER: No.

17 MR. MUNN: This is not the entire  
18 website. Okay. Thank you.

19 MR. MITTLE: At this time we would offer  
20 AG 3.

21 HEARING EXAMINER: Any objection to  
22 what's been identified as a products page, one of more  
23 than one page of a website for Comm South?

24 MR. MUNN: I have no objection with that  
25 clarification that it's not the whole website.

1 HEARING EXAMINER: Keeping in line with  
2 my prior commentary on Cricket's website and the  
3 newspaper articles, AG 3 is admitted.

4 (Whereupon, AG EXHIBIT 3 was  
5 admitted into evidence, a copy of  
6 which may be found under separate cover.

7 (Whereupon, a document was marked  
8 AG EXHIBIT 4 for identification.)

9 BY MR. MITTLE:

10 Q. I've also put in front of you what has been  
11 marked AG 4. Do you have that in front of you,  
12 Mr. Teitzel?

13 A. Yes, I do.

14 Q. I represent to you that that is a website for  
15 Fast Bucks?

16 A. It appears to be that.

17 Q. Do you see where it says on that page that  
18 services provided by Fast Bucks is Comm South  
19 telephone service?

20 A. I see that, yes.

21 Q. If a consumer -- let's see how I can phrase  
22 this. If a consumer has no choice but to borrow money  
23 from Fast Bucks at 652 percent annual percentage rate  
24 and also to buy Comm South's service, would that be an  
25 actual commercial alternative to Qwest's wire-line?

1           A.     It's a difficult question for me to answer.  
2     I do not believe that Fast Bucks is the only source  
3     from which Comm South service can be purchased. I  
4     would not know if that, understanding individual  
5     circumstances, why a customer may be applying for a  
6     loan with that kind of an annual percentage rate.

7                     As I sit here today, I wouldn't testify  
8     that I think that would represent Comm South's entire  
9     customer body. I suspect it's a mix, so I'm not quite  
10    sure how to respond directly to you there. I don't  
11    know the specific circumstances.

12           Q.     Okay. So let's assume that the FCC finds  
13    that Comm South is not an actual competitive  
14    alternative. Without Comm South, how many residential  
15    lines would be provided through resale in New Mexico?  
16    And let me know if this is -- I don't think it's  
17    confidential.

18           A.     No, it's not. Let me respond in round  
19    numbers and if I can I'll give you some approximates.

20           Q.     Sure.

21           A.     Let me respond with respect to the numbers we  
22    have presented. I know that Comm South has presented  
23    data request responses to the Commission which may  
24    have a different number. But as I mentioned, without  
25    the pseudo CLEC quantities, which were 38 in my

1 September report, there are 1,791 resold residential  
2 lines. Of those, about 1,600 approximately were Comm  
3 South's. So that would leave roughly 200 for the  
4 remainder.

5 Q. Do you know what percentage of Qwest lines,  
6 residential access lines, that would be?

7 A. I'm sorry. I missed the first part of your  
8 question.

9 Q. Do you know what the percentage that would be  
10 of Qwest's total residential access lines?

11 A. What percentage is 200?

12 Q. 200 over 600,000.

13 A. It would be, obviously, less than 1 percent.  
14 I don't know the precise fraction.

15 Q. Would that be de minimis?

16 A. Again, as I sit here today, I'm not able to  
17 quantify whether 50 or 200 or 1,000 would be  
18 considered de minimis. I think a variety of factors  
19 will be considered and will be considered by the FCC  
20 in making that determination. I can't offer that  
21 value judgment.

22 Q. If I could now turn to your Rebuttal  
23 Testimony.

24 A. (Witness complies.)

25 Q. Let's start at Page 2, please. In the middle

1 of the line it says:

2 According both to this Commission --  
3 meaning the Public Regulation Commission  
4 -- and the FCC fully satisfied Track A by  
5 establishing the existence of at least one  
6 CLECs providing resale-based competition  
7 in the residential market.

8 Has the FCC issued an opinion to that,  
9 that they told Qwest?

10 A. I would respond by saying that my  
11 understanding that the FCC's Order, Arkansas-Missouri  
12 docket, 271 docket, is that, in fact, one CLEC was  
13 sufficient evidence that Track A was satisfied. That  
14 one CLEC happened to be Altel in Arkansas.

15 Q. But you don't have like an opinion letter  
16 from the FCC?

17 A. No.

18 Q. Or from this Commission?

19 A. Around the --

20 Q. --

21 A. The validity of one CLEC being satisfactory?  
22 Not on that particular point.

23 Q. On Line 12 of that page you go:

24 Neither of the witnesses opposing Qwest in  
25 this proceeding have challenged the

1 accuracy.

2 Are you aware of who has the burden of  
3 proof in a Section 271 Application?

4 A. Qwest bears that burden.

5 Q. Even if no other party files comments.

6 Is that correct?

7 A. I believe that is correct.

8 Q. If we could now jump to Page 4.

9 A. (Witness refers to document.)

10 Q. That's also of your Rebuttal Testimony.

11 A. (Witness complies.)

12 Q. The question on Line 8:

13 Does Track A require Qwest to establish  
14 that multi CLECs are serving -- I assume  
15 that's a typo -- more than a de minimis  
16 number of competitors -- customers in New  
17 Mexico.

18 Do you see that question?

19 A. Yes, I do.

20 Q. And you are testifying only with respect to  
21 Track A.

22 Is that correct?

23 A. In this proceeding, I am.

24 Q. You are not addressing the public interest  
25 requirement?

1           A.     In this proceeding, I am not.

2           Q.     And the public interest requirement may  
3     require something different than what is required in  
4     your reading of Track A?

5           A.     The public interest requirement has a  
6     separate set of standards from Track A. So to that  
7     extent, I would say yes.

8           Q.     So, for example, on Page 5 when you talked  
9     about, at Lines 6 through 8, when you talk about the  
10    competing provider for purposes of Track A does not  
11    need to serve any particular number of customers, you  
12    are not saying that -- you are not saying that a  
13    review of the particular number of customers or market  
14    share may not be relevant for purposes of the public  
15    interest?

16          A.     I apologize, Mr. Mittle. I'm not sure I  
17    fully captured your question.

18          Q.     When you are testifying in this proceeding,  
19    you are not saying that the public interest  
20    requirement may not require that CLECs serve a  
21    particular market or that it serve a particular number  
22    of customers.

23                   Is that correct?

24           MR. MUNN:   Your Honor, I object to the  
25    question as outside the scope of this hearing, which

1 is not only limited to Track A but the residential  
2 market to Track A. It's not the public interest,  
3 which is a completely different section of the Act.

4 HEARING EXAMINER: Mr. Mittle, didn't we  
5 deal with this issue yesterday as far as public  
6 interest being outside the purview of --

7 MR. MITTLE: Well, it was outside the  
8 purview because Mr. Badal did not refer in his  
9 testimony to this Sprint Communications case.

10 Contrary to Mr. Teitzel, his footnote 11  
11 specifically refers to the case.

12 HEARING EXAMINER: I remember now. This  
13 was something we were going to get back to with this  
14 witness, wasn't it?

15 MR. MITTLE: Right. In fact, Page 6, the  
16 DC circuit agrees.

17 MR. MUNN: Your Honor, I would like that  
18 because the Ameritech Michigan Order or pick any FCC  
19 Order (inaudible) says that you can also get into  
20 whether a mechanized loop test on their checklist Item  
21 4 is appropriate. The DC circuit case addresses many  
22 issues.

23 The only thing that Mr. Teitzel has cited  
24 it for in footnote 11 is a Track A issue regarding the  
25 volumes of competition. I might note that the FCC in



1     that decision, actually the sentence that Mr. Mittle  
2     read, not only said that he confirms that the DC  
3     circuit says the FCC reads Track A to require a  
4     minimal competition but also confirms that Track A in  
5     that reading is not challenged here. So I think that  
6     he has cited a very specific piece of the DC circuit  
7     decision. It deals with Track A. There's only a  
8     limited amount of that decision that deals with  
9     Track A.

10           HEARING EXAMINER:    Ms. Reilly?

11           MS. REILLY:   Thank you. I almost waited  
12     on this yesterday. I was jumping up and down. It's  
13     Staff's position that public interest and Track A are  
14     not totally separate. In fact, this very witness  
15     testified at the multi-state that Track A is a  
16     building block for the public interest analysis. We  
17     have cited that in several of our written Pleadings  
18     along with the record cite and I can get it for you.  
19     They are related. That doesn't mean that for purposes  
20     of analyzing Track A we should do the entire public  
21     interest analysis. But I think it's inaccurate to say  
22     that the issues are totally separate, as Qwest is  
23     trying to argue.

24           Where a public interest issue might have  
25     bearing on Track A, I think we need to look at it in

1 this hearing. On the other hand, there are many other  
2 things that are looked at in the public interest  
3 analysis that we don't need to look at in this  
4 hearing.

5 Track A is a component of the public  
6 interest analysis and Mr. Teitzel has testified to  
7 that himself. The FCC has said that one of the things  
8 they looked at in the public interest analysis is the  
9 nature and extent of examination. That's what Track A  
10 is all about. So while I don't think we want to have  
11 the whole public interest hearing here, I think there  
12 are places where the inquiries overlap.

13 MR. MUNN: Your Honor, I would respond  
14 that, first of all, these are clearly separate  
15 sections of the Act one being in 271(D) which is  
16 public interest, (D) through (D)(3)(C) and Track A  
17 analysis is in Section C of the Act, 271(C)(1)(A),  
18 which is one of the specific components.

19 Section (C) is distinguished from (D)  
20 because in Section (C) Congress actually said that  
21 they were looking for a consultative role by the  
22 states for checklist compliance in (C)(1)(B) and in  
23 (A), which is the Track A analysis, they want to have  
24 a consultative role with the states. That  
25 specifically is not the issue in Section (D) where the

1 public interest determination falls.

2           Additionally, when you look at whether  
3 public interest is related to Track A, I mean, there  
4 is no component in the public interest analysis for a  
5 volume of competition. I mean, the public interest  
6 analysis follows; one, whether the local markets are  
7 open to competition; two, whether there's an adequate  
8 assurance of future compliance and; 3, the unusual  
9 circumstances analysis which the FCC rejected  
10 everything thrown against the wall by any party that  
11 they have put up to be an unusual circumstance.

12           Track A specifically addresses issues of  
13 measuring whether there's a competing provider in the  
14 market, not the public interest test. These are  
15 separate. Mr. Teitzel didn't cite any public interest  
16 sections of the DC circuit decision.

17           HEARING EXAMINER: Mr. Munn, do you  
18 dispute the claim made by Staff that Mr. -- I'm at a  
19 loss at this point if you are talking about the public  
20 interest in general or public interest test  
21 specifically as elaborated, according to you in the  
22 Section (D), you know, Staff has claimed that your  
23 witness, which you had him clarify this morning, that  
24 he's presenting Supplemental Direct here because he  
25 presented Direct Testimony at the collaborative

1 process.

2 Are you disputing Staff's claim that  
3 Mr. Teitzel has already testified as to some type of  
4 public interest component of (C) that in my mind what  
5 I heard him differentiate it from the public interest  
6 analysis test that's in (D)? Are you disputing that?

7 MR. MUNN: Your Honor, No. 1, I haven't  
8 memorized the three-day transcripts of the hearings  
9 that occurred in the multi-state, so I can't tell you  
10 today if there was one line of what a witness said  
11 back in June of 2001 was or was not there. I assume  
12 that if Staff has that, they will pull that out. I  
13 don't remember that statement being made but, again, I  
14 haven't memorized the transcript.

15 I think more importantly whether a  
16 non-attorney says something about the relationship  
17 between one statute and another is not going to be  
18 helpful to the Commission in deciding the issue before  
19 them which is the residential Track A market. I mean,  
20 that's for legal briefing. They can argue their  
21 position in the brief and we can do the same, or the  
22 findings of fact. I think this is a legal  
23 determination and is probably not a very productive  
24 avenue to pursue.

25 HEARING EXAMINER: All right, Mr. Munn.

1 Ms. Reilly, do you have a specific cite for me?

2 MS. REILLY: I do and I'm looking for it.

3 MR. MITTLE: I do.

4 BY MR. MITTLE:

5 Q. Under the Direct Testimony of David Teitzel  
6 filed March 30, 2001. Was that your testimony filed  
7 in the Regional Oversight Committee?

8 A. That's my recollection of the date.

9 Q. He says right here -- I was going to ask him  
10 what the purpose of his testimony was as he recited it  
11 in front of the committee.

12 HEARING EXAMINER: Well --

13 THE WITNESS: Your Honor, if I might,  
14 maybe I can help while you are reading that.

15 HEARING EXAMINER: Well, you want to hang  
16 on because basically your attorney has lodged an  
17 objection to the question.

18 THE WITNESS: Okay.

19 HEARING EXAMINER: So you don't want to  
20 say anything until that particular matter has been  
21 resolved.

22 MS. REILLY: Ms. Hurst, I know that I  
23 quoted that building block cite in some of the reasons  
24 of our --

25 HEARING EXAMINER: Mr. Munn, do you have

1 your witness' Direct Testimony?

2 MR. MUNN: In the multi-state I don't  
3 know.

4 THE WITNESS: I have it here, Your Honor.

5 HEARING EXAMINER: Mr. Munn, if you can  
6 look at Page 6, Line 16, beginning there.

7 THE WITNESS: (Witness hands document to  
8 Mr. Munn.)

9 MR. MUNN: Yes, I have read from Line 16  
10 down. Do you want me to comment on that?

11 HEARING EXAMINER: Well, I'm just saying  
12 it looks like Staff is going to need a few minutes to  
13 try to find their specific reference.

14 MR. MUNN: I could discuss this, if you  
15 would like.

16 HEARING EXAMINER: Let me ask you this,  
17 Mr. Munn, since I wasn't there nor part of it, was  
18 this particular testimony provided to address Track A?

19 MR. MUNN: This testimony -- the answer  
20 to your question is no. The testimony was -- we had  
21 had testimony that; one, addressed Track A and; two,  
22 addressed the public interest. So what you are  
23 reading here is kind of a summary or an overview of  
24 the testimony.

25 There's one compartment which is Track A

1 and that's what is addressed here in Lines 16 through  
2 18 first. It says, first I will describe Track A and  
3 its requirements, bla-bla-bla. Then he goes to  
4 second, which is the second component of the testimony  
5 which was also addressed in the same group. I think  
6 it's Group 5 workshop in the multi-state which was  
7 public interest. Mr. Teitzel, in the multi-state, was  
8 the witness for public interest and for Track A.

9 Those are two separate determinations.  
10 Because Mr. Teitzel is such a brilliant witness, we  
11 have him addressing two different areas just like  
12 Karen Stuart addresses checklist Item 2, 5, sometimes  
13 parts of 4. We have witnesses that address -- one  
14 witness that will address different facets or  
15 components of the 271 checklist. But that doesn't  
16 mean that somehow they are now magically interrelated.

17 There is a Track A section of his  
18 testimony, as you see. It starts on Page 7 of the  
19 testimony that you have before you. Then you go all  
20 the way through Track A. Then there will be a public  
21 interest section to that testimony that starts on Page  
22 41.

23 So, I mean, they are different inquiries.  
24 Again, I don't see -- what I've seen so far is any  
25 statement from Mr. Teitzel that somehow these are

1     magically the same. I would say, again, even if there  
2     is a statement out of three days of hearing that might  
3     have been spoken in error I don't understand what  
4     relevance that would have here.

5             I mean, these are different portions of  
6     the Act. There is a definitive scope for this  
7     hearing, the Track A residential component. So I  
8     think it's outside the scope of the hearing.

9             HEARING EXAMINER: Mr. Mittle?

10            MR. MITTLE: Starting at Page 54 of  
11     Mr. Teitzel's testimony, his Direct.

12            HEARING EXAMINER: Well, address for me  
13     what Mr. Munn is saying.

14            MR. MITTLE: The first question asked:  
15     Section (D), other public interest  
16     considerations.

17            Answer: We know that Qwest has opened  
18     its local exchange markets to competitors.

19            That's what we are talking about is  
20     competition in the residential. He, Mr. Teitzel,  
21     calls that a public interest consideration. They are  
22     directly interrelated. I'm just asking whether it  
23     complies with Track A.

24            The question just went that he is not  
25     testifying to the public interest here today and that



1 the public interest may require different standards.  
2 Actually, if we are going to back up, that is what the  
3 question was.

4 MR. MUNN: Your Honor, the place where  
5 Mr. Mittle just read from Page 54 where it says open  
6 its local exchange market to competitors, that is the  
7 first element of compliance with public interest that  
8 the FCC has laid out; is the local market open to  
9 competition.

10 What the FCC has said there is if you  
11 comply with the 14-point checklist, the market being  
12 open for competition is completely different from  
13 what's the level of competition in the market. That's  
14 what Track A is designed to address. But I think that  
15 Mr. -- well, I think that when you look at the public  
16 interest analysis and you can see from this testimony  
17 that you go back to page --

18 HEARING EXAMINER: No. I didn't see  
19 anything because I don't have the testimony any more.  
20 The point is you're saying it doesn't have anything to  
21 do with this hearing and all Mr. Mittle seems to be  
22 asking your witness is, is he testifying to that in  
23 this hearing.

24 So do you object to that question?

25 MR. MUNN: I'm sorry, then. I need to be

1 clear on the question because I would like to stop  
2 this discussion and move on. So what is the question?

3 HEARING EXAMINER: Mr. Mittle has just  
4 indicated to me that the question that he really wants  
5 to ask here on this is whether or not Mr. Teitzel is  
6 testifying as to a public interest analysis.

7 MR. MITTLE: Yes, ma'am. And that the  
8 public interest analysis may be different from your  
9 testimony for purposes of Track A.

10 MR. MUNN: With that clarification, we  
11 can let the witness answer that question. It's just  
12 like the last time I had an objection. I think the  
13 question sort of changed afterward but if that's the  
14 question, I'm fine.

15 HEARING EXAMINER: And you are going to  
16 tell me what, Ms. Reilly?

17 MS. REILLY: To make the record clear, I  
18 wanted to say that the cite Mr. Teitzel stated that  
19 the Track A analysis is, quote, a building block for  
20 the public interest analysis, is the transcript of  
21 June 6th at Page 48, and I can find that.

22 More importantly, however, in this Track A  
23 case Qwest filed a Motion to Compel Track A responses  
24 by CLECs, and the Commission in docketing this Track A  
25 proceeding asked CLECs to respond.

1           In Paragraph 11 of the Track A Procedural  
2 Order our Commission has drawn a connection between  
3 the public interest analysis and the Track A  
4 proceeding. Paragraph 11 states:

5           Our decision is also guided by the public  
6 interest analysis we are charged with  
7 undertaking, an inquiry that focuses in  
8 part on assessing whether barriers to  
9 competitive entry in the local exchange  
10 markets have been removed and local  
11 exchange markets today are open to  
12 competition. Indeed, in reference to a  
13 separate but integrally related means of  
14 attempting to ascertain the information  
15 sought by the proceeding established in  
16 this Order Qwest concedes as much.

17           The Commission there quotes from Qwest:  
18 The information the Commission instructed  
19 CLECs to provide -- I'm inserting in the  
20 Track A survey -- to provide, is vital to  
21 the public interest and to the  
22 Commission's ability to carry out its  
23 responsibilities in this case.

24           And that cite is from Qwest's Motion to  
25 Compel Track A survey responses.

1           MR. MUNN:    Your Honor, as one of the  
2 authors, I assume, of this Motion -- I usually write  
3 most of these -- public interest here is, of course,  
4 mentioned in the general sense that it seems like for  
5 Track A purposes it's important for the citizens of  
6 this state to have the CLECs respond to the Track A  
7 survey. I mean, that's, I think, a self-evident point  
8 and that's certainly the point that was being made in  
9 the brief.

10           I definitely disagree that somehow Track A  
11 and public interest are melded into one analysis. I  
12 think the FCC has articulated a four-part test for  
13 Track A and a three-prong test for the public  
14 interest. Those are separate tests and I continue to  
15 maintain that.

16           Sometimes if I loosely use the word public  
17 interest, it means it's good for the citizens of the  
18 state as opposed to the analysis mentioned in the DC  
19 Circuit or the 271 context public interest test.

20           So if that was confusing, I apologize.

21           HEARING EXAMINER:   Well, I appreciate  
22 that, Mr. Munn. I don't think that the Commission  
23 ever takes the word public interest loosely in its  
24 task. But I understand, as I have previously  
25 mentioned, that public interest generally in what I

1 understand, again not being privy to that part of the  
2 271 process, but what I understand to be some other  
3 kind of component, the parties are in a lot better  
4 position, having dealt in the collaborative process  
5 and in currently dealing with other types of 271 that  
6 I'm not privy to, to know the complexities of the  
7 differentiations.

8 But I'm left here with what I believe is  
9 the situation where I think it's been figured out. I  
10 think that, at least the questions as posed by  
11 Mr. Mittle have alleviated the reasons for your  
12 objection.

13 We have arrived at a -- at two, actually,  
14 non-objectionable questions and I'm still left now  
15 with trying to understand whether or not Staff's  
16 position is one that I need to address on this topic.  
17 I mean --

18 MS. REILLY: Kind of a wide open question  
19 there.

20 HEARING EXAMINER: We had a question, an  
21 objection, we had some dialogue there as to public  
22 interest generally, public interest specifically,  
23 public interest whatever. Now I'm wondering whether  
24 or not Staff is asking for some ruling at this point.

25 MS. REILLY: We are not. We were weighing

1 in on the dialogue that was going on and responding to  
2 what I kept hearing continually suggested by Qwest  
3 that Track A and the public interest are completely  
4 separate.

5 It's our strong belief, and our witness  
6 tends from time to time to talk about public interest  
7 implications of Track A issues.

8 So while we want it clear -- and we are  
9 not asking for a clear, we want to make it clear that  
10 our position is that they are not totally separate.

11 Mr. Teitzel has indicated on June 6th at  
12 Page 48 of that transcript, which I can find you, that  
13 Track A is a building block to the public interest  
14 analysis.

15 That's exactly our position. And in the  
16 public interest component of this case, we have filed  
17 Pleadings indicating exactly that, that they are  
18 interrelated. We are not proposing that the public  
19 interest, the whole public interest debate is wide  
20 open here in this Track A proceeding. But from time  
21 to time there are overlaps. It's our position that  
22 they are not, as Qwest has suggested, totally  
23 separate.

24 HEARING EXAMINER: All right. So Staff  
25 doesn't want a ruling and it sounds like that Staff

1 and Qwest are, at least according to you, in agreement  
2 as to a common position to Page 48 of some transcript.  
3 So that's good.

4 Now that we've got that figured out and  
5 I'm assuming the objection and the question are now  
6 moot. And Mr. Mittle, if you will ask your question  
7 now.

8 BY MR. MITTLE:

9 Q. Okay. Mr. Teitzel, you are not testifying  
10 here today that the standards applicable for Track A  
11 are necessarily those standards that are applicable  
12 for the public interest?

13 A. No, I'm not.

14 Q. Can I ask a procedural question of the  
15 Hearing Examiner?

16 HEARING EXAMINER: Sir?

17 MR. MITTLE: So the collaborative process,  
18 do I need to ask you to take administrative notice or  
19 is it already in the record? Is there some process  
20 we should do?

21 MS. REILLY: The multi-state record, is  
22 that what you are talking about.

23 MR. MITTLE: Right.

24 MS. REILLY: It is in the record here at  
25 the Commission with the exception of public

1 transcripts are available on Liberty's website.  
2 Confidential transcripts, it's my understanding by an  
3 agreement of Qwest that they are filed here and that  
4 the facilitator's reports are filed here.

5 But as far as the record from the hearing,  
6 the public transcripts are all on the website and  
7 available and the confidential transcripts should be  
8 filed and the reports are all filed of record here in  
9 our Records Department.

10 MR. MITTLE: So to the extent that the  
11 public transcripts are not filed, can I ask you,  
12 please, to take administrative notice so we can refer  
13 to them as needed in the findings of facts and  
14 conclusion of law.

15 HEARING EXAMINER: Any objection,  
16 Mr. Munn, that I take administrative notice of the  
17 collaborative process including what has been  
18 described by Ms. Reilly as a filing on the public  
19 interest on, I guess, the consulting group's website?

20 MR. MUNN: No objection. My  
21 understanding is, and we cite it through the  
22 multi-state transcript and exhibits throughout all of  
23 our briefing here, my understanding is that when that  
24 job was given to John Antonuk to facilitate that  
25 proceeding it was part of all of the states, so I have



1     been doing and plan to do the same thing you are  
2     asking to do, Mr. Mittle.

3                 MR. MITTLE:    Okay.

4                 HEARING EXAMINER:    Okay, Mr. Mittle, I  
5     will take administrative notice of the collaborative  
6     process in these transcripts.

7                 MR. MITTLE:    Thank you.

8     BY MR. MITTLE:

9                 Q.     Mr. Teitzel, we will fast-forward to Page 9.

10                A.     Sorry, Page 9 of my Direct or Rebuttal?

11                Q.     Of your Rebuttal.

12                A.     Rebuttal?   (Witness refers to document.) I  
13     have that page.

14                Q.     When you discuss briefly PCS providers, at  
15     Lines 6 to 7 you say that the FCC has held that a PCS  
16     provider can qualify as a competing provider under  
17     Track A.

18                        Do you see that?

19                A.     (Witness refers to document.) I do.

20                Q.     But at no time has the FCC held that a PCS  
21     provider is a competing provider under Track A.

22                        Is that correct?

23                A.     I believe the language does say can qualify  
24     in that Order and that's the second BellSouth  
25     Louisiana Order.

1 Q. In that Order they use the phrase competitive  
2 equivalent.

3 Is that correct, if you know?

4 A. I'm sorry. Did they use the phrase  
5 competitive equivalent?

6 Q. Yes, if you know.

7 A. I don't recall that phrase.

8 Q. At Page 13 of your Rebuttal Testimony.

9 A. (Witness refers to document.) I have that  
10 page.

11 Q. You say at Line 13 the FCC reaffirmed this  
12 holding in SBC Kansas-Oklahoma referring to a holding  
13 in the Louisiana case.

14 A. Yes, that's correct.

15 Q. Isn't it a fact that the Louisiana case was  
16 never -- the SBC Louisiana was not entitled to Section  
17 271 approval?

18 A. I need to qualify my answer. My  
19 understanding is that that petition was not approved  
20 by the FCC. But my understanding is it was not  
21 approved because there were some problems with the  
22 checklist compliance. The issue wasn't around Track A  
23 specifically.

24 So I think it's a guideline, it's a  
25 framework for what needs to be complied with for a

1 successful petition.

2 Q. On that same page you then talk about the  
3 Kansas Order. You say:

4 There the FCC stated that it was prepared  
5 to find that SBC had satisfied the  
6 residential portion of Track A for Kansas  
7 solely on the basis of resale-based  
8 competition.

9 Do you see that?

10 A. I do.

11 Q. You therefore cite to the Order at Paragraph  
12 43, note 101?

13 A. That's right.

14 Q. Do you happen to have a copy of the Order  
15 with you?

16 A. (Witness refers to document.) I don't have  
17 the entire Order.

18 Q. Do you have that particular footnote?

19 A. Yes.

20 Q. And in that footnote did not the FCC state:  
21 Had we been unable to rely on SWBT's  
22 December 20 ex parte letter or its other  
23 letters of estimations put forward in its  
24 comments and replies, we would have been  
25 faced with the situation of having to

1           decide whether residential resale was  
2           sufficient.

3           A.    I'm sorry.  Are you asking for a yes or no?

4           Q.    Yes.  I'm asking for a yes.

5           A.    Yes, yes, I will say yes.

6           Q.    Well, let's go back.  What they said:  
7                 Consequently, all the Sprint and other  
8                 commentators could have conceivably argued  
9                 would have been to reiterate its opinion  
10                that only a de minimis number of  
11                residential customers are served by UNE P  
12                (sic) in Kansas.

13                   And they rejected that argument; right?

14           A.    I'm sorry.  I don't have that full text.  I  
15           simply have an excerpt from the footnote.  If you  
16           could show me the language I'll be happy to review it.

17           Q.    No.  I'll leave it for briefing.  If you  
18           could, turn now to Page 15 of your Rebuttal Testimony.

19           A.    (Witness complies.)  I have that.

20           Q.    You used the word square.

21           A.    Yes, I do use that phrase.

22           Q.    What do you mean by square?

23           A.    In this context square means direct or  
24           head-on as opposed to an obtuse holding or a hit, if  
25           you will.

1           Q.    So are you saying that the FCC makes it  
2 square that Section 271 approval Track A can be met  
3 solely through resale in the residential market?

4           A.    They have said that, yes.

5           Q.    And in which case did they say that?

6           A.    (No response.)

7           Q.    Where the RBOC was given approval to enter  
8 the long distance market?

9           A.    My basis for that statement was the second  
10 Louisiana Order.

11          Q.    And in the second Louisiana Order permission  
12 was not granted?

13          A.    For reasons other than Track A; that's  
14 correct.

15                   HEARING EXAMINER:   Mr. Mittle, how are we  
16 looking?

17                   MR. MITTLE:   Probably 15 minutes.

18                   HEARING EXAMINER:   All right.  We are  
19 going to recess for lunch and we will come back and  
20 you will have your opportunity, Mr. Mittle, to finish  
21 up.  We shall be in recess until --

22                   MR. MITTLE:   Can I ask a question off the  
23 record?

24                               (Whereupon, a brief discussion was  
25 held off the record.)

1                   HEARING EXAMINER:   All right.  We are  
2 recessed until 1:15.

3                   MR. MITTLE:  Thank you.

4                   (Whereupon, the hearing was adjourned  
5 for the lunch recess.)

6                               \*   \*   \*

A F T E R N O O N   S E S S I O N

DAVID TEITZEL

Whereupon, the witness having been previously sworn upon his oath, resumed the stand and continued to testify as follows:

HEARING EXAMINER: All right. We are back from lunch.

Mr. Mittle?

MR. MITTLE: Thank you.

BY MR. MITTLE:

Q. Mr. Teitzel, I'd like to direct your attention to your Rebuttal Testimony at Page 19 and more specifically to footnote 52.

A. (Witness refers to document.) I have that cite.

Q. In footnote 52 you say that the Commission has accepted the facilitator's finding on the existence of business competition in New Mexico.

Has the Commission issued an Order yet?

A. They have issued an Order with respect to this Track A procedural schedule that we are here to discuss today. The Order was limited to investigation

1 around the presence of resale -- excuse me,  
2 residential competition.

3 Q. But have they issued a specific Order on  
4 business competition in New Mexico?

5 A. There has been no Final Order on that.

6 Q. Thank you. One final question: Is Qwest  
7 entitled to enter the long distance -- let me rephrase  
8 that if you don't mind.

9 Is it Qwest's position that it has an  
10 absolute right to enter the long distance market?

11 A. Let me respond as directly as I can. An  
12 absolute right? I would not characterize it that  
13 way. I would say Qwest has the privilege of entering  
14 that market if it satisfies all the requirements  
15 outlined by the Telecom Act of 1996 and then the  
16 subsequent guidelines issued by the FCC. In this case  
17 I believe Qwest has met those requirements. I think  
18 we have earned that privilege.

19 Q. Thank you.

20 MR. MITTLE: No further questions.

21 HEARING EXAMINER: Thank you, Mr. Mittle.

22 Ms. Reilly, do you have questions of the  
23 witness?  
24  
25



CROSS-EXAMINATION

BY MS. REILLY:

Q. Good afternoon, Mr. Teitzel.

A. Good afternoon, Ms. Reilly.

Q. I've got so much paper I don't know what to do. Would you turn to your Rebuttal Testimony at Page 6, please?

A. (Witness complies.) I have that page.

Q. Beginning at Line 14 is the sentence that begins with the clause -- it starts with Track A merely requires that there be one or more operational CLECs in New Mexico providing service for a fee to customers.

Do you see that?

A. Yes, I do.

Q. When you say Track A merely requires that, by merely do you mean only or solely?

A. I mean there are certain minimum requirements that a BOC must satisfy in demonstrating that it has met the Track A test.

Q. And you are not meaning to suggest that Track A requires only a showing of one or more operational CLECs in New Mexico providing service for a few customers, are you?

1           A.     I think that is one of the requirements. It  
2 is not the only requirement.

3           Q.     Okay. Don't you also have to show that a  
4 competing provider is serving a sufficient number of  
5 customers to establish an actual commercial  
6 alternative?

7           A.     I believe that if the CLEC is in the market  
8 and offering service for a fee, has attained a group  
9 of customers that were formerly Qwest customers that  
10 CLEC is operational, it is competing with Qwest in a  
11 particular market.

12          Q.     So is that a no, you don't believe that you  
13 need to show that a competing provider is serving a  
14 sufficient number of customers to establish an actual  
15 commercial alternative to satisfy Track A?

16          A.     I think we talked earlier this morning that  
17 there is no specific numerical threshold. It is a  
18 concept of de minimis and that concept is considered  
19 as part of a whole range of requirements.

20                   So I think to the extent there are CLECs  
21 or at least one CLEC providing service, that  
22 requirement is met.

23          Q.     Okay. I'm going to ask you to focus on this  
24 phrase. I'm quoting this phrase from FCC orders. The  
25 phrase is 'a sufficient number of customers to

1 establish an actual commercial alternative'.

2 Do you believe that you are required to  
3 show that?

4 HEARING EXAMINER: Mr. Munn?

5 MR. MUNN: I would like to know what  
6 Order this is so I can follow along.

7 MS. REILLY: I'll get into that. But I am  
8 quoting from several -- in fact, I think most of the  
9 FCC Orders issues in 2001 contain that phrase. And we  
10 can get into it. I'm just asking more generally if  
11 you are required to show a sufficient number of  
12 customers to establish an actual commercial  
13 alternative in addition to what you said here at  
14 Page 6, Line 14.

15 HEARING EXAMINER: Well, I think,  
16 Ms. Reilly, that Mr. Munn is entitled to be able to  
17 follow along here. If you can, give a specific  
18 reference.

19 MS. REILLY: All right. I'll move on and  
20 come to it in context.

21 HEARING EXAMINER: All right. Thanks.

22 BY MS. REILLY:

23 Q. For the moment, though, I'll take it that the  
24 answer is either, no, you are not or you are not aware  
25 that you are required to show that.

1                   Is that correct?

2           A.    Ms. Reilly, I'm trying to be responsive. I  
3 testified this morning that there is no specific  
4 numerical threshold. There must be a demonstration  
5 and evidence that a CLEC or CLECs are providing a  
6 commercially viable service in the marketplace.

7           Q.    And that's the next clause of that very same  
8 sentence, at Page 6 of your Rebuttal Testimony; isn't  
9 that correct, that Track A does not require that a  
10 CLEC have achieved any particular number of customers  
11 or market share.

12                   Is that right?

13          A.    That's true.

14          Q.    Is that right?

15          A.    That is correct.

16          Q.    Will you go to your Rebuttal at Page 8,  
17 please?

18          A.    (Witness refers to document.) I have that  
19 page.

20          Q.    Starting at Line 13 you quote the FCC from  
21 its Verizon Massachusetts Order to the effect that low  
22 customer volumes in and of themselves do not undermine  
23 a showing that a market is open as long as everything  
24 else is complied with.

25                   Do you see that?

1 A. That's a fair paraphrase.

2 Q. Yes, to the effect that, yes?

3 A. Yes.

4 Q. In the Verizon Massachusetts case, the FCC  
5 said the words that you have quoted here at Paragraph  
6 235.

7 Is that correct?

8 A. That is correct.

9 Q. And Paragraph 235, that's from the FCC's  
10 public interest analysis in that Massachusetts case,  
11 not a specific Track A analysis.

12 Isn't that right?

13 A. I believe that's correct. I would accept  
14 that subject to check.

15 Q. Do you have that case with you?

16 A. I don't have it on the stand. My attorney  
17 may or if you have a copy, I'll be happy to review it.

18 Q. I have one copy of it. I'll lend it to you  
19 if I can have it back.

20 A. I promise.

21 Q. (Counsel hands document to witness.)

22 A. (Witness refers to document.) That is in  
23 Section 8, a public interest analysis.

24 Q. Thank you. I'm going to come get that back  
25 from you if you don't mind. Actually, why don't you

1 keep it for a minute.

2 Specifically with respect to Track A at  
3 Paragraphs 224 through 225 of that same decision --  
4 I'll let you get there.

5 A. (Witness refers to document.) I got that  
6 cite.

7 Q. The FCC stated -- and I'm paraphrasing since  
8 you've got my case -- the FCC stated that three  
9 facilities-based carriers were providing competitive  
10 service in Massachusetts and that -- I think I'm  
11 quoting from my notes -- a sufficient number of  
12 residential customers are being served by competing  
13 LECs using their own facilities to demonstrate an  
14 actual commercial alternative.

15 Isn't that what the FCC said in its Track  
16 A analysis in the Massachusetts case?

17 A. In this particular docket, that was their  
18 finding.

19 Q. Mr. Teitzel, what else do you know about the  
20 status of competition in Massachusetts at the time the  
21 FCC made these observations?

22 For example, isn't it true that there were  
23 over 79,000 facilities-based competitive residential  
24 lines serving about 2.6 percent of the state's  
25 residential lines at the time this Application was

1 ruled on by the FCC?

2 A. I don't recall those particular numbers.

3 Q. Did you check on that before you cited this  
4 case in your testimony?

5 A. I did read the FCC's findings on that  
6 particular docket. I just don't recall the numbers  
7 off the top of my head.

8 Q. Well, is that matter a concern to you to see  
9 if the levels of competition in Massachusetts were  
10 similar to the levels of competition in New Mexico?

11 A. I would have to say not. There have been  
12 multiple states that have received 271 approval with  
13 widely varying levels of competition. Frin reasonably  
14 rural states -- I should say more rural states than  
15 Massachusetts, like Arkansas, for example, Oklahoma.

16 Q. Well, Massachusetts clearly had plenty of  
17 facilities-based residential competition, didn't it?

18 A. It's a more densely populated metropolitan  
19 state. I would agree with that.

20 Q. A lot more than here?

21 A. It's an entirely different demographic than  
22 New Mexico.

23 Q. Mr. Teitzel, on a question by Mr. Witt you  
24 talked about the carrier that froze its service and  
25 was no longer accepting new service. Yet, the FCC

1 accepted that competitor for Track A purposes.

2 Do you recall that?

3 A. I do.

4 Q. And that was the Arkansas case; right?

5 A. Yes, it was.

6 Q. That was a facilities-based competitor,  
7 wasn't it?

8 A. That's my understanding.

9 Q. That was Alltel. It's, in fact, identified  
10 at Paragraph 118 of the FCC's Arkansas Order as a  
11 facilities-based competitor, isn't it?

12 A. I don't have that Order on the stand with me.  
13 I would accept that subject to your representation.

14 Q. I'm going to give you that one, too, because  
15 I have a few more questions like that. (Counsel hands  
16 witness to document.)

17 A. You are referring to Paragraph 118?

18 Q. Yes, I did.

19 A. I've got that cite.

20 Q. And that paragraph does identify Alltel as a  
21 facilities-based competitor, doesn't it?

22 A. It does.

23 Q. And isn't it true that Alltel, a  
24 facilities-based provider, had more than 10,000  
25 residential customers when the FCC accepted it as a



1 Track A competitor?

2 A. That's not my recollection. My recollection  
3 was the number was less than 5,000.

4 Q. And is that recollection based on a  
5 Department of Justice evaluation?

6 A. I believe --

7 Q. Or maybe I should say what is your  
8 recollection based on?

9 A. I can find the cite. I believe it was in the  
10 Order.

11 Q. Okay. If you would like to look for that.

12 A. I will. (Witness refers to document.) Give  
13 me just a moment. While I'm looking, let me mention  
14 I do see a cite here that Alltel provided service to  
15 several thousand lines according to the Arkansas  
16 Commission. And they footnoted that cite in the  
17 Arkansas Commission comments consultation report at 5.  
18 That report, I believe, was where the numbers actually  
19 are articulated.

20 Q. Okay. Did you look at the Department of  
21 Justice evaluation on the levels of competition in  
22 Arkansas?

23 A. I do not recall reviewing that document.

24 Q. Would you accept subject to check that they  
25 identified a number of customers served by Alltel of

1 10,000?

2 A. Do you have the document in the room today?  
3 If you do, I would like to review it before I answer.

4 Q. I have it at my desk if you give me a minute.

5 A. For efficiency, I will accept that subject to  
6 check at the break.

7 HEARING EXAMINER: Now, what is the  
8 document?

9 MS. REILLY: The Department of Justice  
10 evaluation.

11 HEARING EXAMINER: Of what?

12 MS. REILLY: As part of the 271 process in  
13 addition to consulting with state Commissions, the FCC  
14 is required by the federal Act to consult with the  
15 Department of Justice.

16 The Department of Justice does an analysis  
17 of the status of competition in states for which a 271  
18 Application is made. Those are all on the Department  
19 of Justice's website. And I do have the Arkansas  
20 evaluation with me.

21 HEARING EXAMINER: Was this evaluation  
22 referred to in the Order?

23 MS. REILLY: Not that I can recall.

24 HEARING EXAMINER: You are telling me  
25 that the DOJ had to do an evaluation in order for the

1 FCC to do this Order?

2 MS. REILLY: Yes, under the federal  
3 statute.

4 MR. MITTLE: It is referred.

5 MS. REILLY: Mr. Mittle informs me that it  
6 is referred to.

7 MR. MITTLE: Paragraph 9.

8 MS. REILLY: And it is referred to in  
9 Paragraph 9.

10 HEARING EXAMINER: But I don't see any  
11 numbers.

12 MS. REILLY: I almost feel like I'm  
13 testifying, but I have noticed that the FCC rarely  
14 repeats the numbers that are present in the DOJ's  
15 evaluations. But the DOJ frequently puts numbers in  
16 its evaluation similar to the FCC.

17 The FCC, in my review of FCC Orders,  
18 frequently translates that to a sufficient number of  
19 customers served in its Orders. If you are interested  
20 in knowing what the number actually is, I can go to  
21 the DOJ evaluations.

22 HEARING EXAMINER: Thanks.

23 BY MS. REILLY:

24 Q. Mr. Teitzel, are you aware whether in  
25 addition to the customers served by facilities-based

1 CLECs in Arkansas, whether or not there was a  
2 significant number of residential customers served by  
3 resellers in Arkansas?

4 A. My recollection of SBC's evidence was that  
5 they pointed to Alltel as proof that there was at  
6 least one CLEC operating in that particular state.

7 Q. Right.

8 A. I don't recall their evidence about resale.  
9 I think they relied upon the Alltel evidence.

10 Q. So you are not sure whether or not there was  
11 evidence of residential customers served through  
12 resale in addition to the Alltel evidence?

13 A. I don't recall seeing it if they did  
14 introduce it.

15 Q. And as part of its 271 Application, the BOC  
16 in the Arkansas case lowered its UNE rates to  
17 encourage competition, didn't it? If you want to  
18 look at Paragraph 120.

19 MR. MUNN: Your Honor, I'll object. The  
20 UNE rates and any relation on UNE rates is outside of  
21 the scope of this hearing.

22 MS. REILLY: Madam Hearing Examiner, this  
23 witness has referred to this case suggesting that we  
24 should look to it for guidance on what should or  
25 should not be accepted in terms of competition. And

1 the status of competition in that state and the facts  
2 that the FCC relied on in accepting the state of  
3 competition in that state and how they are different  
4 from the situation in our state are highly relevant  
5 and probative.

6 HEARING EXAMINER: Ms. Reilly, can you  
7 refer me to the part of the Order?

8 MS. REILLY: Paragraph 120. The final  
9 paragraph states:

10 Also the Arkansas Commission opined that  
11 the lower UNE rates Southwest Bell  
12 Telephone recently implemented in Arkansas  
13 might encourage competitive LECs to become  
14 more active in the residential market.

15 Do you see that, Mr. Teitzel.

16 MR. MUNN: Your Honor, the judge had a  
17 question. In the context there if you look at the  
18 preceding sentence it expressly says that they are not  
19 relying on any of this for purposes of Track A. It  
20 says:

21 Although those competitive LECs provide  
22 service to a very limited number of  
23 customers at this point we do not rely on  
24 their presence for purposes of Track A...

25 And it continues on. So again, I would

1 object. This is beyond the scope of the proceeding.  
2 But I hesitate to continue objecting because my point  
3 is to move this along. It's obvious that I'm not  
4 expediting this process.

5 MS. REILLY: Madam Hearing Examiner, this  
6 is a quote from the FCC in a case cited by this  
7 witness in the FCC's Track A analysis analyzing the  
8 extent of competition in Arkansas. It's not  
9 irrelevant to Track A if the FCC put it in its Track A  
10 analysis.

11 HEARING EXAMINER: And your specific  
12 question was, the sentence is there and you want to  
13 know what from the witness?

14 MS. REILLY: I was asking the witness to  
15 confirm that in analyzing competition in Arkansas, the  
16 FCC noted that the BOC in Arkansas had reduced its UNE  
17 rates to try to stimulate competition in that state or  
18 encourage competition in that state.

19 Isn't that true?

20 HEARING EXAMINER: All right. I'm going  
21 to overrule your objection, Mr. Munn. Answer the  
22 question, sir.

23 THE WITNESS: I'll answer the question to  
24 the extent that I can. I have to admit I don't  
25 understand the full context of the statement here.

1           For example, I don't know when the cost  
2 docket may have been opened in that particular state.  
3 I don't know what the UNE rate was before the cost  
4 docket and after. I don't know those things, so it  
5 does say here that -- let me read the quote:

6           The Arkansas Commission opined that the  
7 lower UNE prices, SWBT, recently  
8 implemented in Arkansas might encourage  
9 competitive LECs to become more active in  
10 the residential market.

11           So I guess it says what it says. I don't  
12 know the full context. I'd be offering an opinion  
13 that's not based on a full understanding.

14 BY MS. REILLY:

15           Q. That's fine. That actually brings me  
16 straight to my next question. It's the beginning part  
17 of that same paragraph.

18           In its Track A analysis in the Arkansas  
19 case remaining at Paragraph 120, the FCC did note that  
20 in addition to Alltel, a facilities-based provider --  
21 there were several other providers serving customers  
22 in Arkansas. I believe you just pointed that out.

23           Is that right?

24           A. I'm sorry. Which paragraph are you looking  
25 at again?

1 Q. The earlier part of Paragraph 120.

2 A. (Witness refers to document.)

3 Q. I'll read it.

4 We note that SWBT has also signed  
5 interconnection agreements with other  
6 competitive LECs that according to SWBT  
7 currently provide residential service in  
8 Arkansas. Although those competitive LECs  
9 provide service to a very limited number  
10 of customers at this time and we do not  
11 rely on their presence for purposes of  
12 Track A, their presence gives us further  
13 comfort that residential customers  
14 currently have alternatives to SWBT  
15 service.

16 Do you see that?

17 A. I do see that.

18 Q. So the FCC is stating that these other  
19 providers provided service to a very limited number of  
20 customers.

21 Is that right?

22 A. That is their language; that's correct.

23 Q. So the FCC indicated that it wasn't going to  
24 rely on those carriers for Track A, but instead relied  
25 on the facilities-based carrier that had several



1 thousand residential customers.

2 Isn't that what the FCC did in the  
3 Arkansas case?

4 A. The FCC relied on the Alltel evidence in  
5 Arkansas. That is correct.

6 Q. On a question by Mr. Mittle, you estimated  
7 the number of customers served by Cricket as a  
8 replacement for wire-line.

9 Do you recall that?

10 A. Yes, I do.

11 Q. Can you, excluding any estimates, tell me how  
12 many customers Cricket has in Albuquerque and Santa  
13 Fe?

14 A. The actual number would be a proprietary  
15 number to Cricket and, to my knowledge, Cricket has  
16 not responded to the Commission's survey. So I don't  
17 believe any of us on the Qwest team have that  
18 information. We do have estimates ranging from 36,000  
19 to 56,000 customers.

20 Q. And you did hear me say excluding estimates,  
21 didn't you?

22 A. I did. That's the only number I can  
23 contribute.

24 Q. On certain questions by Mr. Mittle there was  
25 an exchange about Comm South and whether or not Comm

1 South provides local exchange service to business  
2 customers in New Mexico.

3 Do you recall that?

4 A. I do.

5 Q. Have you reviewed Comm South's responses to  
6 the Commission's Track A survey?

7 A. Yes, I have.

8 Q. And you are aware, then, that Comm South  
9 itself has told this Commission that it does not serve  
10 business customers in New Mexico?

11 A. Comm South has said what it said in the data  
12 request.

13 Q. And what it said was?

14 A. That it did not serve business customers. As  
15 I stated earlier we are, in fact, reselling some  
16 business services to Comm South.

17 Q. Now, as I recall at the multi-state, both you  
18 and your Counsel told the facilitator that the best  
19 way to determine what competitors were providing what  
20 services in New Mexico would be for the Commission to  
21 do its own survey.

22 Do you recall that?

23 A. I do.

24 Q. And our Commission did that; right?

25 A. Yes, they did.

1 Q. And Comm South responded saying it does not  
2 provide business service in New Mexico; right?

3 A. They did respond as such.

4 Q. Can you turn to your Rebuttal at Page 13,  
5 please?

6 A. (Witness complies.) I have that page.

7 Q. We are talking here about the SBC  
8 Kansas-Oklahoma Order. You say here:

9 According to the FCC, had it been unable  
10 to rely on SBC's evidence of  
11 facilities-based competition, it likely  
12 would have denied SBC's Application --  
13 excuse me -- would not have denied SBC's  
14 Application on Track A grounds and would  
15 have relied on the existence of resale.

16 Is that right?

17 A. That is a quote. That is correct.

18 Q. I think it's actually slightly paraphrased,  
19 but that's the substance of it?

20 A. Yes, it is.

21 Q. You cite to what is now the infamous footnote  
22 101 to Paragraph 43 of the Kansas-Oklahoma Order;  
23 right?

24 A. Yes, I do.

25 Q. I'm going to get there and maybe you could

1 too, if you have that.

2 A. (Witness refers to document.)

3 Q. Are you there?

4 A. I've got the text of the note in front of me.  
5 I don't have the entire Order.

6 Q. Okay. I think that will do.

7 A. Okay.

8 Q. Now, just prior to your quote that we just  
9 went through, the FCC said, quoting:

10 If all other requirements of Section 271  
11 are met, it does not appear to be  
12 consistent with Congressional intent to  
13 exclude a BOC from the in-region interLATA  
14 market solely because competitors' service  
15 to residential customers is solely through  
16 resale.

17 Do you see that?

18 A. Yes, I do, and that's accurate.

19 Q. So wouldn't all the other requirements of  
20 Section 271 include checklist compliance?

21 A. Yes, they certainly would.

22 Q. So to rely solely on resale for purposes of  
23 the residential component of Track A, the FCC would  
24 want to be assured of checklist compliance?

25 A. I'd respond by saying that the 271

1 Application of Qwest or any other BOC would have  
2 various requirements. In my opinion, for an  
3 Application to be approved all those various  
4 requirements must be met. So checklist requirements  
5 must be met. Track A requirements must be met as must  
6 public interest requirements.

7 Q. Well, you would think that they would have to  
8 be met in any event. But from this quote it also  
9 appears that in order to rely solely on resale for  
10 Track A, the FCC would also want to see checklist  
11 compliance?

12 A. I don't disagree with that.

13 Q. Okay. Will you turn now to Page 16 of your  
14 Rebuttal?

15 A. (Witness complies.) I have that page.

16 Q. In the first paragraph on Page 16 you are  
17 commenting on Mr. Ripperger's testimony. At Line 8  
18 you state that checklist compliance is irrelevant for  
19 Track A purposes, don't you?

20 A. I think I'm saying that my understanding of  
21 the purpose of this docket as defined by the  
22 Commission's Procedural Order was to test the extent  
23 and the presence of residential competition in New  
24 Mexico.

25 Q. You used the word irrelevant, didn't you?

1           A.     It's a context question, I think.

2           Q.     Well, my question was a word question.     Do  
3     you use the word irrelevant?

4           A.     If I could finish my answer.     The Commission,  
5     I believe, is going to consider all of these elements  
6     as they look at Qwest's 271 Application.     In context  
7     this hearing, as I understand it, is to test the  
8     extent and the presence of residential competition in  
9     New Mexico.     So from that perspective for this hearing  
10    today, I believe that is irrelevant.

11          Q.     Doesn't it appear to you from the quote we  
12    just went through that it would be relevant if a BOC  
13    wanted to get the FCC to allow it to satisfy the  
14    residential component of Track A solely through  
15    resale, that the FCC would consider checklist  
16    compliance to be relevant?

17          A.     The FCC certainly will consider all of those  
18    elements.     Again, the hearing today, from my  
19    perspective, is narrowly focused on the item I just  
20    mentioned, is residential competition present in New  
21    Mexico.

22          Q.     But you have relied on the Kansas-Oklahoma  
23    Order and specifically you have relied on footnote  
24    101?

25          A.     We have cited those; that's correct.

1 Q. Right. Getting back to the Kansas-Oklahoma  
2 Order at Paragraph 42 of that decision.

3 A. I have that cite.

4 Q. The FCC concluded that, quoting:  
5 A sufficient number of residential  
6 customers are being served by competing  
7 LECs through the use of their own  
8 facilities to demonstrate that there is an  
9 actual commercial alternative to SWBT in  
10 Kansas.

11 Isn't that what the FCC said there?

12 A. That was their finding with respect to  
13 Kansas; that's correct. I would say those findings  
14 and the evidence presented tends to vary state to  
15 state.

16 Q. But so far we have gone through  
17 Massachusetts, Arkansas, and Kansas-Oklahoma and that  
18 same language appears in all three, doesn't it?

19 A. And different language appears in Louisiana,  
20 I would agree with that.

21 Q. And Louisiana didn't get accepted, did it?

22 A. As I testified earlier this morning it was  
23 not because of the Track A issue.

24 Q. Can you identify any FCC approval of a 271  
25 Application where two things are present. First, no

1 facilities-based provider is serving residential  
2 customers and, second, the number of residential  
3 customers served by CLECs is below 1 percent?

4 A. As I sit here today, I'm not aware of one.

5 MS. REILLY: I have no other questions.

6 HEARING EXAMINER: Thank you, Ms. Reilly.

7  
8 EXAMINATION

9  
10 BY THE HEARING EXAMINER:

11 Q. Mr. Teitzel, thanks again for appearing here  
12 to testify.

13 A. You bet.

14 Q. One of the confusions in my mind involves  
15 something that I'd like your assistance in trying to  
16 clear up for our record here today, sir, is upon being  
17 questioned, probably by everybody, but my notes at one  
18 of Mr. Witt's questions, it has to do with the very  
19 important word that everybody is going to have to deal  
20 with, and that being de minimis.

21 I believe you have been asked several  
22 questions about its numerical qualities, and I think  
23 the answer, sir, that I heard you say this morning --  
24 I want to focus on the other part of your answer where  
25 my notes say that there are other factors that are --



1       that the FCC considers in dealing with de minimis.

2               Sir, what I would like you to do is to  
3       tell me what those other factors are and, if you can,  
4       reference me to where the other factors come from.

5       A.     Sure. Very briefly, I think the other  
6       factors would include such things as whether the CLEC  
7       is actually physically in the market and providing  
8       service to customers. Is the CLEC providing service  
9       for a fee to those customers? Is the CLEC providing  
10      service to a similar body of customers as the BOC,  
11      whether it be residential or a business body of  
12      customers?

13             Those things, I think, are found in the  
14      Ameritech Michigan Order in Paragraphs 75 through 78,  
15      as I recall. In that same Order the word de minimis  
16      is used.

17             I think all those factors are considered  
18      as a group in whether the FCC has defined whether or  
19      not there's a de minimis number of -- more than a de  
20      minimis number of CLECs in the market to satisfy all  
21      those requirements. So I think all those factors are  
22      considered by the FCC as an aggregated whole.

23      Q.     So then if we are to arrive at this de  
24      minimis analysis, you are actually looking at the CLEC  
25      and its properties, physically in the market,

1 providing service for a fee, services to a similar  
2 body of customers?

3 A. Right.

4 Q. In addition to some figure that has a  
5 quantitative connotation, I believe was your answer  
6 earlier this morning?

7 A. To my knowledge, there has been no specific  
8 minimum threshold placed, no numerical threshold. The  
9 FCC, I think, looks at the volumes in consideration  
10 with all the other factors we talked about. They take  
11 a look at issues such as is the customer base being  
12 served as a part of the test, is a part of the trial  
13 of some sort, the CLEC may be launching. If the  
14 answer to that is no, and it's actually a tariff  
15 service being offered commercially to customers, I  
16 think those things all are considered in the FCC's  
17 analysis.

18 Q. Well, I know you have testified that you  
19 don't think there's a magic number.

20 A. Right.

21 Q. That if all of a sudden it's more than de  
22 minimis. Is that what you have said?

23 A. That is correct.

24 Q. Is there some magic number that is de  
25 minimis? That is not more than de minimis, so I'm

1 going to look at it the other way. Is there some bad  
2 number that sets -- if you are saying there isn't a  
3 bar, I'm interpreting that as a ceiling. If you are  
4 telling me there is no ceiling or there is no middle,  
5 is there a floor?

6 A. I don't think so and I'd respond by saying  
7 the FCC specifically has said that there is no market  
8 share requirement, there is no geographic scope  
9 requirement. If there's no market share requirement,  
10 that implies to me that there is no numerical value  
11 that can be put into that market share test. So I  
12 don't think there is a, quote-unquote, bad or --

13 Q. Is that also what you are referencing that  
14 there's no market share requirement, is that also back  
15 to the Ameritech?

16 A. I believe so. If you want I can verify that.  
17 My memory is not as good as it was two years ago.

18 Q. Mr. Teitzel, I don't blame you with all this.

19 A. (Witness refers to document.) Let's do it  
20 this way. I believe the answer is yes, but I'll check  
21 that at the next break if I could.

22 Q. No market share requirement you think is also  
23 from Ameritech?

24 A. Okay.

25 Q. See, that brings up another point that I'd

1 like for you to clarify. Somebody touched on it  
2 earlier, but I just want to make crystal clear,  
3 hopefully, that I understand.

4 What I heard both Mr. Badal and you  
5 testify to and what I've read in your testimony  
6 appears to me to be that Qwest is asserting that it  
7 has met the residential de minimis requirement, or has  
8 met its burden, I'll put it that way, on the basis of  
9 two types of service, resold lines and then also the  
10 PCS service which I believe was testified to this  
11 morning was included in the CLEC service?

12 A. That's correct.

13 Q. Okay. Now, what I'm wondering is are there  
14 any other types of service that Qwest is alleging are  
15 out there that they want the Commission to look at?

16 A. At this point in the record and our filing we  
17 have supplied evidence about resale residential-based  
18 competition in the state and the PCS-based  
19 competition.

20 Q. Yes.

21 A. We have examined this market thoroughly,  
22 extensively. I personally have spent many hours  
23 investigating this market.

24 Those two forms of competition are the  
25 ones that are most defensible at this point. There

1 may be others. There could be merging competitive  
2 modes that may be coming into the market here. At  
3 this point I don't have evidence to present that to  
4 you. So we would stand on the PCS-based Cricket  
5 market argument as well as the resale argument.

6 Q. Well, do you know whether or not there's any  
7 type of land-line facilities-based CLEC competition  
8 for residential service?

9 A. I don't have --

10 Q. Non-PCS.

11 A. I understand. I don't have evidence that I  
12 can empirically with hard facts support. I would  
13 testify today I think there may be some, but it's  
14 exceedingly hard to identify that. As I said here  
15 today, I cannot give you empirical facts.

16 Q. So you don't want the Commission to look at  
17 that? I mean, the main focus of the argument you  
18 have already testified to; PCS, CLEC and resale. But  
19 you are not testifying here today that there are?

20 A. I could not in good faith testify to you that  
21 that exists if I could not empirically prove it.

22 Q. All right.

23 A. So at this point the data in my testimony  
24 regarding resale, the information regarding Cricket's  
25 PCS service and Mr. Badal's testimony would be our two

1 pieces of evidence.

2 Q. Okay. Is there any other type of information  
3 in the exhibits that were attached to your testimony  
4 that refer to any other type of potential residential  
5 competitor?

6 A. I would reply by saying not in my testimony  
7 and I don't believe there is. I would check this if  
8 you just give me a moment, in Mr. Badal's testimony.  
9 Give me just a couple of seconds to scan quickly,  
10 please.

11 Q. Okay. There was some reference in your  
12 Attachment A, sir, I think to some types of bypass  
13 lines that I didn't understand and I didn't understand  
14 where they fit into what we were talking about with  
15 regard to resale or this PCS/CLEC?

16 A. Are you referring to my Attachment A to the  
17 Staff data request?

18 Q. Yes, sir.

19 A. All right. So that was not my testimony.

20 Q. So that's not part of your testimony?

21 A. Correct.

22 Q. All right. You are not offering that here,  
23 then?

24 A. I am not offering it.

25 Q. Okay.

1           A.     It's not part of my testimony.

2           Q.     All right, sir. I appreciate that. All  
3 right.

4                     So now I understand, then, there's resale,  
5 the PCS -- okay. All right. What you have just  
6 explained to me as the other factors and I've heard  
7 three different words. You just told me that the CLEC  
8 physically in the market providing service for a fee,  
9 providing a service to a similar body of customers.

10                    And then I thought I heard you tell  
11 Ms. Reilly -- I thought you used the words providing  
12 service to former Qwest customers. And I thought I  
13 heard you tell Mr. Witt customers who would otherwise  
14 be -- they would otherwise be a customer of Qwest.

15                    Now, is that all the same group of people?

16           A.     I think it would be. It would be considered  
17 customers in the addressable market. That may be a  
18 better way to phrase that.

19                    In many instances a residential customer  
20 will opt to subscribe to CLEC service instead of Qwest  
21 service where they were formerly a Qwest customer. In  
22 other instances, a customer may come into the market  
23 new, move into Albuquerque as a new resident and  
24 immediately subscribe to a CLEC service. In that  
25 instance they would not have been a former Qwest

1 customer. But if they are in Qwest's service  
2 territory, they are part of that addressable market,  
3 part of the market that's up for competition.

4 Q. Well, one of the questions I had when I was  
5 reading your testimony, sir -- let me -- well, I'll  
6 remember it as best I can based on your testimony here  
7 today.

8 Sir, I think you were asked some questions  
9 about this company Comm South?

10 A. Yes.

11 Q. And I believe that you are familiar with  
12 Mr. Ripperger's testimony about that particular  
13 company?

14 A. Yes, I am.

15 Q. I'm trying to understand whether or not it's  
16 Qwest's position that -- and we will hear from  
17 Mr. Ripperger later on this -- but basically it seems  
18 like what Southwest is trying to say is that basically  
19 a lot of the customers that Qwest has disconnected,  
20 those are kind of the Comm South customers.

21 If that's the case, if those are customers  
22 that Qwest has -- how can I put it politely -- has  
23 decided no longer -- that they no longer want that  
24 particular type of customer because they are not  
25 paying their bill -- and I don't blame them -- but how



1 does that translate or does it translate into your  
2 similar body of customers or your -- they would have  
3 been Qwest customers -- factor here for me?

4 A. Let me try to help. From my perspective,  
5 there are many types of residential customers. They  
6 are all residential, local exchange customers in one  
7 form or another. In some instances the customer may  
8 become delinquent in paying their bill and a  
9 disconnect happens from non-payment. I would not  
10 testify today that Qwest has no interest in that  
11 customer. We certainly do. We try to work with the  
12 customer to get the payment issue resolved and get the  
13 customer reconnected with Qwest. If the customer has  
14 an issue with the level of the bill, we have such  
15 things as toll screening or toll blocking where the  
16 customer can pay only for the local exchange service.  
17 If the customer has a problem with being able to  
18 afford a bill and they are a low income type customer  
19 and meet certain requirements, they can subscribe to  
20 or receive benefits such as link-up and life-line, as  
21 I testified in my testimony.

22 So I don't want at all to leave the  
23 impression with Your Honor or with the Commissioners  
24 that Qwest has no interest in those customers and they  
25 are not part of our potential customer base. They in

1 fact are. They are part of the addressable market.

2 Q. Well, but my point is that for some reason --  
3 well, let me ask you this. Are you familiar with Comm  
4 South and the Reconnexes (sic) which is also another,  
5 according to them, if I recall correctly, sort of a  
6 niche, at least, that was their initial target were  
7 high risk credit customers, which is part of their  
8 justification why they wanted to charge 49.99 a month  
9 to these people. I mean, do you dispute that there  
10 are those kinds of companies that have this specific  
11 target?

12 A. No, I wouldn't dispute that at all. I would  
13 say that CLECs in total have different strategies.  
14 Some CLECs package services and offer a premium price.  
15 Other CLECs may target a certain sub-set of customers.  
16 I think that is correct and true.

17 But as I testified a moment ago, it's  
18 Qwest's perspective that all those residential local  
19 exchange customers are part of the addressable market  
20 and should be considered in any kind of an analysis.

21 Q. So you don't necessarily agree, then, with  
22 Mr. Ripperger that all of the resold lines to Comm  
23 South are going to Qwest disconnects, or do you have  
24 an opinion on that?

25 A. If the implication is that Qwest has,

1 quote-unquote, turned its back on those customers, no  
2 longer has an interest in those customers, I would  
3 disagree with that.

4 Q. Well, if --

5 A. I think --

6 Q. Well, let's not say that they don't care  
7 about them anymore. Actually, that brings me to my  
8 next point or question.

9 Is it possible that if a high risk credit  
10 customer goes to one of these alternative providers is  
11 it possible they might be successfully rehabilitated  
12 after a period of months that Qwest would take them  
13 back, i.e., expressing your -- or would that be in  
14 line with what you are talking about, that Qwest may  
15 still have interest in this particular residential  
16 customer?

17 A. I would testify by saying that I have not  
18 analyzed all the customers in the Comm South customer  
19 base. But I'm very confident in saying that there is  
20 customer migration back and forth between Qwest and  
21 Comm South.

22 Q. Do you think that's something that the  
23 Commission needs to be concerned about in this  
24 particular part of the residential analysis?

25 A. Well, again, the target market of Comm South

1 is a sub-set of the total base of residential  
2 customers in Qwest's service territory. I could also  
3 maybe offer some other cites, as I'm thinking about  
4 this. This also is from the Ameritech Michigan, by  
5 the way, Paragraph 77, that cites footnote 170. Let  
6 me just read it, if I could:

7 The FCC has acknowledged that the House of  
8 Representatives rejected a version of  
9 Track A that would have demanded the  
10 presence of the CLEC capable of offering  
11 service that is comparable in price,  
12 features and scope to that offered by the  
13 BOC.

14 So I think that directly bears in the Comm  
15 South discussion. They are targeting a sub-set of  
16 customers. They are offering a price that does not  
17 match Qwest's, in fact is higher. That being the case  
18 and in view of this cite, I'm not sure that  
19 disqualifies Comm South as an alternative provider in  
20 the state. In fact, I would maintain they are an  
21 alternative provider.

22 Q. Mr. Teitzel, your Rebuttal Testimony, Page  
23 25.

24 A. I'm sorry, that was Page 25?

25 Q. Yes, sir.

1 A. (Witness refers to document.)

2 Q. Can you give me the cite for the proposition  
3 at 16 through Line 19? Your competitive provider?

4 A. Well, there again, the source for that  
5 concept is the Ameritech Michigan Order where they  
6 said the CLEC must be operational in the market  
7 providing service for a fee and serve more than a de  
8 minimis number of customers.

9 Q. Was that at the 75 and 78 again?

10 A. Yes.

11 HEARING EXAMINER: All right, sir. I  
12 thank you very much.

13 Mr. Munn, any Redirect of your witness?

14 MR. MUNN: Thank you.

15

16 REDIRECT EXAMINATION

17

18 BY MR. MUNN:

19 Q. Mr. Teitzel, do you recall some questions  
20 about your Rebuttal Testimony at Page 4, if you could  
21 please turn there, Lines 1 through 4?

22 A. (Witness complies.)

23 Q. Page 4, Lines 1 through 4 of your Rebuttal.

24 A. Yes, I have. I have that page.

25 Q. And at Lines 2 and 3 there, why don't you

1 just read the sentence through the footnote 3, Lines 1  
2 through 3. Then I have a follow up question to some  
3 of your Cross-Examination.

4 MR. MITTLE: I'll stipulate that it says  
5 what it says. He doesn't need to read it.

6 HEARING EXAMINER: You just wanted the  
7 witness to --

8 MR. MUNN: Sure. I'll read it in my  
9 question.

10 BY MR. MUNN:

11 Q. Mr. Teitzel, your testimony states that  
12 according to the FCC a CLEC is a, quote, competing  
13 provider, end quote, as long as it is actually in the  
14 market and operational.

15 Parenthetically you have (i.e., accepting  
16 requests for service and providing such service for a  
17 fee.)

18 Now, with respect to the concept accepting  
19 requests for service, has the FCC said anything  
20 subsequent to the Ameritech Michigan Order on that  
21 topic about what could be a competing provider?

22 A. Yes. We talked earlier today about the FCC's  
23 Order in the Arkansas docket. And in fact, they  
24 reviewed the evidence supplied by SBC regarding Alltel  
25 in that state.

1           And SBC asserted and the FCC agreed that  
2 Alltel is no longer accepting new service requests  
3 from new customers in that state.

4           Q.    Is that at Paragraph 118 and Paragraph 119?

5           A.    I don't have the Order in front of me. I  
6 believe it was Paragraph 118 or 119.

7           Q.    I believe that case is to your left.

8           A.    (Witness refers to document.) Thank you.

9                   MR. WITT: Your Honor, if I may inquire,  
10 is the purpose of this Redirect to provide some  
11 changes, additions or deletions to Mr. Teitzel's  
12 testimony? Because I don't see -- I don't recall the  
13 questions that Mr. Munn has referenced here. It  
14 strikes me that this is unnecessary.

15                   MR. MUNN: Your Honor, I can specifically  
16 address where it occurred. It was in response to a  
17 question from Mr. Witt. I thought the question was  
18 seemingly ironic.

19                   Mr. Witt had Mr. Teitzel actually turn to  
20 Page 4 of his Rebuttal Testimony and address Lines 1  
21 through 6 of his Rebuttal Testimony. This was  
22 specifically brought up by Mr. Witt.

23                   MR. WITT: I beg your pardon, Your Honor,  
24 but my questions were specifically aimed at the phrase  
25 de minimis number.

1           So when I read that particular section of  
2     the testimony, it was merely to set up a context for  
3     my questions relating to -- and by the way, they were  
4     painful questions, I think, for Mr. Teitzel to answer  
5     because they were so difficult for him to answer. But  
6     they were all focused expressly and exclusively on the  
7     phrase de minimis number.

8           HEARING EXAMINER:   Mr. Munn, is this  
9     reference that the question that you are asking about  
10    whether or not there's new information, is this  
11    something that we need testimonial-wise or is the  
12    current state of the FCC in their guidance or their  
13    speaking on this something that's a legal point that  
14    can be argued?

15          MR. MUNN:   Well, I guess I would state  
16    that it's both. I think what the term competing  
17    provider means, I think, is a legal point that can be  
18    briefed. But we spent a lot of time today discussing  
19    that.

20               It seems like we have been discussing what  
21    I view as legal points and I was trying to provide  
22    context to Redirect the witness that in the context of  
23    what can be considered a competing provider under  
24    Track A, the FCC in its most recent 271 Order has even  
25    said you don't even have to be accepting new requests



1     like they used to. But they don't require that any  
2     more.

3                 HEARING EXAMINER: Right. Even though it  
4     does seem to be in the nature of supplementing your  
5     witness' testimony, I think everyone is aware of that  
6     and I'm going to overrule the objection and you can  
7     answer the question.

8                 THE WITNESS: I'm not sure I recall the  
9     specific question.

10                The cite that I was thinking of was  
11     Paragraph 119. The relevant cite, I believe, is in  
12     the middle of that paragraph where the FCC says we  
13     disagree with these commentators that a competing  
14     provider must necessarily be accepting new customers  
15     in order to qualify for Track A.

16                MR. MITTLE: Madam Hearing Examiner, will  
17     you ask the witness to finish reading that sentence?

18                HEARING EXAMINER: Any objection to  
19     reading the sentence, Mr. Munn?

20                MR. MUNN: I have no objection.

21                THE WITNESS: I will continue. I thought  
22     that was the salient point. Particularly given the  
23     large volume of customers served by Alltel.

24                MR. MITTLE: Thank you.

25                THE WITNESS: Should I continue?

1           MR. MUNN:    No.   I think you have answered  
2   the question.

3           Madam Hearing Examiner, yesterday you had  
4   asked a question as far as where the FCC has addressed  
5   the only one provider is enough issue. I can do this  
6   either in Redirect or I can just tell you another  
7   cite. It doesn't matter to me. It could come from  
8   the witness or me. It's a briefing point but just  
9   helps you to know where to go since you asked that  
10   question. I gave you yesterday Paragraph 104 of  
11   Ameritech Michigan. An additional cite is Paragraphs  
12   118 and 119 of Arkansas-Missouri.

13          HEARING EXAMINER:   Thank you, sir. That  
14   was something I wanted to know from Mr. Badal.

15          MR. MUNN:    That's correct.

16          HEARING EXAMINER:   Thank you.

17          MR. MUNN:    By the way, my records don't  
18   show that AG-4 was tendered or admitted. I just  
19   wanted to make sure that the caveat that I had on  
20   AG-3, which is the first page of the Comm South  
21   website that was picked up, also applies to AG-4 which  
22   to my knowledge hasn't been admitted or tendered yet.  
23   Those were a couple of screens from the Comm South  
24   website. It's not intended to be the entire website.

25          HEARING EXAMINER:   Mr. Mittle, do you

1 intend to offer AG-4.

2 MR. MITTLE: I will offer AG-4.

3 HEARING EXAMINER: Is there any objection  
4 with the -- well, do you know, is this the total Fast  
5 Bucks website or is this just three pages from it?

6 MR. MITTLE: I'm looking for my copy.

7 HEARING EXAMINER: Actually, the last  
8 page is blank, so only two pages.

9 MR. MITTLE: I'm looking for my Fast  
10 Bucks.

11 MR. MUNN: That actually helps clarify  
12 one thing. So AG-4 is not a part of the Comm South  
13 website. It's a part of the Fast Bucks website?

14 HEARING EXAMINER: Yes, different  
15 website.

16 MR. MUNN: I was easily confused by the  
17 staple. I don't know why but I'm still having trouble  
18 with that.

19 HEARING EXAMINER: Mr. Mittle, is this  
20 the total Fast Bucks website?

21 MR. MITTLE: No, ma'am.

22 MR. MUNN: No objection.

23 HEARING EXAMINER: All right. Then with  
24 the caveat that it's two pages of the Fast Bucks  
25 website for whatever value it may have, without

1 objection, AG-4 has been tendered and will be admitted  
2 for whatever probative value, if any, it has.

3 (Whereupon, AG EXHIBIT 4 was  
4 admitted into evidence, a copy of  
5 which may be found under separate cover.).

6 HEARING EXAMINER: Mr. Munn.

7 MR. MUNN: Thank you, Your Honor.

8  
9 BY MR. MUNN:

10 Q. Mr. Teitzel, do you have a copy of the  
11 Ameritech Michigan Order with you?

12 A. I don't have a full copy, no.

13 (Whereupon, a brief discussion was  
14 held off the record.)

15 BY MR. MUNN:

16 Q. Mr. Teitzel, you were asked some questions  
17 about the number of customers served by a particular  
18 provider and how that sort of fits into this whole  
19 competing provider analysis.

20 If you would, please turn to the Ameritech  
21 Michigan Order at footnote 70, the sentence there that  
22 addresses the Senate rejecting an amendment.

23 If you would, please read that one  
24 sentence into the record.

25 A. I'm sorry. Did you say footnote 170?

1 Q. Correct, the Senate rejected.

2 A. This is at Page 40 of the Ameritech Michigan  
3 Order. It says in footnote 170:

4 The Senate rejected an amendment that  
5 would have required the presence of  
6 competing carriers 'capable of providing a  
7 substantial number of business and  
8 residential customers with telephone  
9 exchange or exchange access service' prior  
10 to the in-region interLATA entry by the  
11 BOC.

12 Q. Thank you. And there were a lot of questions  
13 about -- I think particularly from, I believe,  
14 from Mr. Mittle, if I have my notes right, about the  
15 price of services and certainly questions about the  
16 same price.

17 Has the FCC addressed whether to be a  
18 competing provider, to qualify under Track A, that  
19 provider needs to be offering services in a comparable  
20 price to what the BOC is?

21 A. No. And this gets back to the discussion I  
22 had with Your Honor.

23 Q. Actually, my question is has the FCC  
24 addressed that?

25 A. Yes.

1 Q. Can you tell me where? If you know?

2 A. Again, that was in the Ameritech Michigan  
3 Order at Paragraph 77. I read that cite into the  
4 record a moment ago. But that was the location.

5 Q. There the FCC says that they don't even need  
6 to be comparable in rates, features or scope?

7 MS. REILLY: Objection; leading.

8 MR. MUNN: It says what it says.

9 MR. WITT: Your Honor, I would even go  
10 further than that. At this point, we have had two  
11 separate questions that purport to be Redirect but are  
12 merely a recitation of what's in an FCC Order. In  
13 view of the time, I guess I'm going to ask -- no, I  
14 will object based on the redundancy of the Redirect  
15 and also in view of the time involved.

16 HEARING EXAMINER: All right. Mr. Witt,  
17 he withdrew the question, so there is nothing -- I'm  
18 not going to address your objection since he's already  
19 -- it's too late. He withdrew it. So, Mr. Munn?

20 BY MR. MUNN:

21 Q. Mr. Teitzel, you were also answering some  
22 questions, I believe in response to Ms. Reilly, about  
23 the Arkansas-Missouri and how many customers or access  
24 lines, I forget which, that Alltel had.

25 Do you recall that?

1 A. Yes, I do.

2 Q. And did you ever have occasion to look at the  
3 underlying affidavits that are cited there in that  
4 Order that SBC filed with the FCC addressing Alltel?

5 A. I did. And as I reviewed that evidence, I  
6 noted that the number of access lines served by Alltel  
7 was less than 5,000. That number is different from  
8 the number that Ms. Reilly cited from the DOJ record.

9 Q. So if the DOJ's record was whatever number  
10 Ms. Reilly said, at least what SBC was putting forward  
11 as the competition by Alltel in that state was 5,000  
12 or less?

13 A. Yes.

14 MS. REILLY: Leading.

15 BY MR. MUNN:

16 Q. I believe this is my -- it may be -- I think  
17 I have two more questions.

18 Mr. Teitzel, when you were responding to  
19 the Hearing Examiner's questions she asked you about  
20 de minimis and you were discussing terms like  
21 operational and providing services for a fee, things  
22 along those lines.

23 I just want to make sure the record is  
24 clear so we don't confuse the terms de minimis and  
25 competing provider.

1           So can you please testify about whether  
2   the terms operational and providing services for a fee  
3   relate to whether an entity is actually a competing  
4   provider or whether it relates to the term de minimis?

5           A.    I think the terms operational, providing  
6   service for a fee, relate to the term competing  
7   provider.  It's subsumed in that.

8           Q.    Thank you.

9                   HEARING EXAMINER:   Subsumed in?

10                  THE WITNESS:   Subsumed in the term  
11   competing provider.

12                  But I think, as I was having a dialogue  
13   with you, Your Honor, a half-hour ago, you were  
14   talking about the fact that the FCC will look at all  
15   those factors as they gauge what competition looks  
16   like in a particular state.

17                  MR. MUNN:   Your Honor, if I may approach,  
18   I'm on my last inquiry here.

19                  HEARING EXAMINER:   Off the record.

20                  (Whereupon, a brief discussion was  
21   held off the record.)

22                  MR. MUNN:   I think that concludes my  
23   questions.  It was so much of a wing-ding approach I  
24   couldn't conceive of it and frankly it's a briefing  
25   point.  You were asking about market share where the



1 FCC said there is no market share test. We'll brief  
2 it and I can give you FCC paragraphs if you want,  
3 later. It's not a witness type question.

4 HEARING EXAMINER: All right. Thank you,  
5 sir.

6 Mr. Witt, any further questions?

7 MR. WITT: No, thank you.

8 HEARING EXAMINER: Thank you. Mr.  
9 Mittle, any further questions?

10 MR. MITTLE: No, thank you.

11 HEARING EXAMINER: Ms. Reilly?

12

13

14 RECROSS-EXAMINATION

15

16 BY MS. REILLY:

17 Q. Hello again, Mr. Teitzel.

18 A. Hello again.

19 Q. I'll try and make it brief. You were asked  
20 some questions by the Hearing Examiner about Qwest's  
21 loss of credit risk customers due to Qwest  
22 disconnecting them for non-payment.

23 Do you recall that?

24 A. Yes, I do.

25 Q. And you were emphasizing that you didn't want

1 to leave the impression that Qwest has no interest in  
2 those customers any longer, that you try to work with  
3 them and you refer them to life-line and link-up.

4 Do you recall that?

5 A. That is my testimony.

6 Q. You apparently, then, Qwest does have  
7 interest in these customers, but you are not quite  
8 interested enough to continue serving them in the  
9 absence of payment.

10 Is that accurate?

11 A. Qwest is providing a service like any other  
12 service provider, that costs us something to provide.  
13 So clearly, Qwest would require compensation for that  
14 service, and I think that's reasonable.

15 Q. I'm not arguing. When you -- when we are  
16 talking about disconnected customers, we are talking  
17 about customers that you have refused to continue to  
18 serve.

19 Isn't that right?

20 A. (No response.)

21 Q. You disconnected them?

22 A. They have been disconnected for a non-payment  
23 issue. That would be true.

24 Q. Do you offer any prepaid service similar to  
25 what Comm South does to try and keep these customers?

1           A.    We don't offer a prepaid service, to my  
2           knowledge. We do offer functionality such as toll  
3           blocking to help the customer if that is a problem for  
4           that particular customer, maintain a lid on the bill.

5                   MS. REILLY: That's all I have.

6                   HEARING EXAMINER: Thank you.

7                   THE WITNESS: Thank you.

8  
9                                   EXAMINATION

10  
11           BY THE HEARING EXAMINER:

12           Q.    Mr. Teitzel, I just have one. The very first  
13           question when Mr. Munn was talking with you about our  
14           Kansas --

15                   MR. MUNN: I think it was  
16           Arkansas-Missouri.

17           BY THE HEARING EXAMINER:

18           Q.    That wasn't 118 and 119, that's  
19           Arkansas-Missouri?

20           A.    Yes, that's correct.

21           Q.    All right. I think the whole point was over  
22           some disagreement that Alltel isn't currently  
23           accepting customers?

24           A.    That is correct, they are not. That is  
25           correct.

1           Q.   Well, sir, is it your opinion that the  
2 Commission, in viewing its evidence, that that's  
3 something that the Commission should consider or  
4 shouldn't consider if the provider wasn't taking  
5 customers any more in this particular case?

6           A.   I guess I would respond by saying I'm not  
7 offering a personal opinion as to whether they should  
8 or shouldn't. But the fact is in the Arkansas Order,  
9 there was a piece of evidence that was relevant to  
10 Alltel that they did look at.

11          Q.   Okay. So you are not saying either-or here  
12 before this Commission. You are just saying, hey, in  
13 this particular Order they specifically noted this?

14          A.   And I think it's important because they did  
15 look at that issue. It was specific to this  
16 particular CLEC. By definition, then, that would  
17 suggest if they are not accepting new customers, as  
18 customers disconnect, that access line base will, over  
19 time, trend downward. I think that's important.

20          Q.   But also, looking at it in context with all  
21 the other things that went along with that decision;  
22 correct? You are not suggesting that this Commission  
23 look at this in a vacuum?

24          A.   No.

25                   HEARING EXAMINER:   All right.

1 Mr. Teitzel, I thank you very much. You are excused  
2 and I think you may owe me one reference cite, but  
3 maybe not. You can take a look at that while we  
4 recess for ten minutes. We will come back.

5 Mr. Munn, is there going to be anything  
6 further from Qwest?

7 MR. MUNN: Your Honor, I don't believe  
8 so. No. Qwest rests.

9 HEARING EXAMINER: All right. We will  
10 recess for ten minutes. When we come back, Mr. Witt,  
11 we will continue with your witness.

12 MR. WITT: Very well. Thank you.

13 HEARING EXAMINER: Thank you.

14 (Whereupon, a brief recess was  
15 taken.)

16 HEARING EXAMINER: Mr. Witt?

17 MR. WITT: For the record, AT&T calls  
18 Diane Roth to the stand.

19

20 DIANE F. ROTH

21 The witness herein, after having been  
22 first duly sworn upon her oath, was  
23 examined and testified as follows:

24

25

DIRECT EXAMINATION

BY MR. WITT:

Q. Please state your name for the record.

A. Diane F. Roth.

Q. And how are you employed?

A. I'm employed by AT&T as an assistant Vice-President from the state government affairs organization.

Q. You have in front of you what has been marked as AT&T Exhibit 1 and AT&T Exhibit 1-A. Would you please identify those two documents?

A. These two documents are my -- well, document AT&T 1 is my Direct Testimony and then AT&T 1-A are the proprietary pages to my Direct Testimony.

(Whereupon, documents were marked

AT&T EXHIBITS 1 and 1-A for identification.)

BY MR. WITT:

Q. Thank you. Do you have any changes, additions or deletions to make to that testimony at this time?

A. No, I do not.

Q. So if I were to ask you the questions contained in that testimony, would your answers be the same as contained there?

1           A.     They would be.

2                   MR. WITT:   Thank you.   At this time, I  
3     would move the admission of AT&T Exhibit 1 and AT&T  
4     Exhibit 1-A.

5                   HEARING EXAMINER:   Mr. Witt, is Exhibit  
6     1-A an envelope or some type of --

7                   MR. WITT:   It's not under seal.   This is  
8     proprietary but it is not subject to the super  
9     proprietary confidential.

10                  HEARING EXAMINER:   My concern is that  
11     since the exhibits become part of the record that the  
12     confidential exhibit is kept under seal.   Pat has  
13     assured me that she will envelope it.   So with that  
14     proviso that 1-A will be in an envelope so people will  
15     not have to sign their non-disclosure statement which  
16     I've just actually got a new one from you, Mr. Munn.

17                  MR. MUNN:   Super protective based on what  
18     Montgomery and Andrews did.

19                  HEARING EXAMINER:   All right.   Very good.  
20     Is there any objection to what's been identified as  
21     AT&T Exhibit 1?

22                  MR. MUNN:   No objection.

23                  MR. OLSON:   I was just going to ask that I  
24     think Qwest Exhibit 3, Mr. Teitzel's Supplemental  
25     Direct, the exhibits to that testimony were

1 confidential and I assume they will be filed in the  
2 same way in the record.

3 HEARING EXAMINER: Are they pink?

4 MR. OLSON: They are on pink paper and  
5 that was the only confidential material in the Qwest  
6 testimony.

7 HEARING EXAMINER: All right. Thank you  
8 sir. No objection to AT&T 1. AT&T 1 will be  
9 admitted.

10 (Whereupon, AT&T EXHIBIT 1 was  
11 admitted into evidence, a copy of  
12 which may be found under separate cover.)

13 HEARING EXAMINER: Any objection to AT&T  
14 1-A?

15 MR. MUNN: No.

16 HEARING EXAMINER: Hearing no objection,  
17 AT&T 1-A will be admitted.

18 (Whereupon, AT&T EXHIBIT 1-A was  
19 admitted into evidence, a copy of  
20 which may be found under separate cover.)

21 HEARING EXAMINER: Mr. Witt?

22 MR. WITT: Thank you, Your Honor. At this  
23 time we would offer the witness for Cross-Examination.

24 HEARING EXAMINER: Thank you very much.

25 Mr. Munn?



CROSS-EXAMINATION

BY MR. MUNN:

Q. Good afternoon.

A. Good afternoon.

Q. Is it fair to say that Cricket did not begin providing its broadband PCS services until February 14th, 2001, in New Mexico?

A. I don't know the actual date that Cricket commenced service in New Mexico.

Q. Let me come back to that question. So I will move on and ask you if the exhibit that you've attached to your testimony as Attachment 6, which I think will be in the colored pink part.

A. (Witness refers to document.) Yes, that is a pink exhibit.

Q. Okay. Your Attachment 6 was completed or the date of this analysis was fourth quarter 2000; correct?

A. That is the date on the latest page of the analysis.

Q. Right. So the analysis would have been either prior to or during the fourth quarter of 2000; correct?

1           A.    Yes.  However, I would also note that Qwest  
2   could have updated the analysis in the year 2000 and  
3   if that occurred -- and I'm not saying it did -- but  
4   our discovery question was not limited to a certain  
5   time frame and certainly wasn't limited to 2000.

6                        So I guess the point I would make about  
7   that is that there isn't an update -- Qwest did not  
8   provide an update.

9           Q.    Right.  My statement is I'm not trying to be  
10   critical of you or AT&T for attaching something that  
11   just addressed 2000.  I just wanted to establish the  
12   time frame in that study.

13          A.    Okay.

14                   MR. MUNN:   Your Honor, may I approach.

15                   HEARING EXAMINER:    Sure.

16   BY MR. MUNN:

17          Q.    Ms. Roth, if you could please look at the  
18   press release that I have just handed you in the first  
19   paragraph.  I just want to ask you, is this a press  
20   release from Cricket identifying February 14th, 2001,  
21   that it launched its Cricket service in Albuquerque  
22   and Santa Fe, New Mexico?

23                   MR. WITT:   Excuse me.  May I ask for  
24   clarification?  Is Mr. Munn asking this or referring  
25   to this in order to refresh Ms. Roth's memory or is he

1 using it to establish that the date that Cricket  
2 statutory service was February 14th?

3 MR. MUNN: I can tell you the purpose of  
4 this is to show that the date that Cricket claims it  
5 began offering services in this state was February 14,  
6 2001.

7 MR. WITT: Then I would object on the  
8 basis of hearsay. Ms. Roth has testified that she  
9 doesn't know when Cricket started service. This is  
10 therefore, being offered to -- as proof of the matter  
11 asserted.

12 MR. MUNN: Your Honor, I'm not offering  
13 it -- what I am offering it for is to show what  
14 Cricket claims. I'm not asking this witness to  
15 somehow put on a Cricket hat and testify on behalf of  
16 Cricket. I'm simply asking her to verify that based  
17 on Cricket's own press release they claim they started  
18 offering services here on February 14th, 2001.

19 MR. WITT: Thank you, Your Honor.

20 HEARING EXAMINER: So based on that  
21 clarification, sir, you are withdrawing your  
22 objection?

23 MR. WITT: Actually, I'm not withdrawing  
24 it because I do think that it is hearsay. But I also  
25 understand that Your Honor admits hearsay for the

1 value which it may have, if any.

2 HEARING EXAMINER: You can answer the  
3 question then. You can say what you think it says.

4 THE WITNESS: Okay. I'm looking at what  
5 appears to be a press release from Leap. It is dated  
6 February 14th and the press release says that Leap is  
7 announcing its service in Albuquerque and Santa Fe.

8 BY MR. MUNN:

9 Q. And the date of that press release is  
10 February 14, 2001?

11 A. That's correct.

12 Q. So is it fair to say that based on this press  
13 release and Cricket's representations that they began  
14 offering service in New Mexico after the study that  
15 you attach as Attachment 6?

16 A. The press release is dated February 14th  
17 announcing service. The latest survey that Qwest did  
18 was fourth quarter 2000. I will add to that that I  
19 don't see a reason why Qwest didn't continue its  
20 surveys if it was seriously concerned about Cricket.  
21 I believe that Qwest could have continued to update  
22 the survey similar to what is attached to my  
23 testimony.

24 Q. Ms. Roth, in your testimony you, I think,  
25 have addressed on Page 3 some numbers that I think

1 Mr. Teitzel was questioned about. You have, I would  
2 have imagined, reviewed Mr. Teitzel's Rebuttal  
3 Testimony.

4 Is that correct?

5 A. I reviewed his Rebuttal Testimony and I also  
6 reviewed the Staff data request. I reviewed his  
7 Direct Testimony, his Supplemental Direct, that is,  
8 correction, his Supplemental Direct, his Rebuttal as  
9 well as the answer to Staff data request 4-11.

10 Q. And Ms. Roth, assuming that there is not some  
11 follow-up that comes out of this I have only one  
12 question left and I think it's a simple question.

13 Do you have any evidence to dispute the  
14 unbundled loop number that Mr. Teitzel has of 9,301  
15 unbundled loops as of September 30th, 2001, that he  
16 discloses on Page 28 of his Rebuttal Testimony?

17 A. I acknowledge what is in his Rebuttal  
18 Testimony. But I would also say that what I see on  
19 the Staff data request response to 4-11 -- let me give  
20 you a line down, about the 13th line down there is a  
21 label that says total Qwest UNE, and resold lines and  
22 facility-based CLEC lines. It gives a total of  
23 32,478. When one adds UNE platform loops in service  
24 of 3,925 to the estimated facility-based competitive  
25 lines in service that are estimated of 26,000 --

1 HEARING EXAMINER: Now, you are not  
2 reading the pink area, are you?

3 THE WITNESS: No, ma'am. This is white.

4 HEARING EXAMINER: All right.

5 THE WITNESS: When you add the UNE  
6 platform loops in service to the estimated  
7 facility-based competitive lines in service of 26,460  
8 to further down the page, the resold line total of  
9 2,093, it indeed adds to what Qwest has labeled total  
10 Qwest UNE, and resold lines and facility-based CLEC  
11 lines of 32,478.

12 So inasmuch as that says total, I have to  
13 say I was surprised when I read what was in David  
14 Teitzel's Rebuttal Testimony  
15 BY MR. MUNN:

16 Q. Fair enough. I'm not here complaining about  
17 anything. I'm simply asking, do you have any evidence  
18 or reason to believe that the -- once this was  
19 clarified -- and I'm not attempting to put any blame  
20 on you as a witness for the testimony that was there  
21 -- I think Mr. Teitzel came back and said, well, we  
22 need to clarify this. That's just UNEP. If you add  
23 UNEP and stand-alone it's the 9,301 number as it was  
24 clarified in Mr. Teitzel's Rebuttal?

25 A. My only dispute would be to point out that

1     there is an inherent inconsistency. On one page in  
2     the response to the Staff data request it represents a  
3     total of UNEs and resold and facility-based. But  
4     apparently the only UNE-type facility that was  
5     included in that total was platform, UNE platform.  
6     But indeed, the line says total.

7                 So I believe there's an inherent  
8     inconsistency in the information that Qwest has put  
9     forth in the case.

10            Q.    Ms. Roth, the first line of that document you  
11     were reading from, doesn't it say UNE platform or UNEP  
12     lines?

13            A.    Yes, it does. However, when you go down  
14     further on the page and read total, what I did was I  
15     assumed that either the top column was mislabeled or  
16     there had been a dramatic decline in the UNE services  
17     and that there weren't any stand-alone UNEs. So I  
18     found the exhibit to be when read next to David  
19     Teitzel's Rebuttal Testimony to be inconsistent and  
20     quite confusing.

21            Q.    And Ms. Roth, also attached to that data  
22     response is also a detailed breakdown, that is  
23     confidential, of the loops and the wire centers where  
24     those UNEP lines are provided.

25                    Isn't it true that each one of those shows

1     that those are just UNE platform loops and not  
2     stand-alone unbundled loops?

3           A.     It does show on the attachment that they are  
4     UNE platform.  However, again, what is misleading is  
5     that there is a line on the non-proprietary document  
6     that shows total.  One could be led to a very logical  
7     conclusion, as I was, that there weren't any  
8     stand-alone loops.  There was no evidence to the  
9     contrary.

10                   MR. MUNN:     Those are all of my questions.  
11     Thank you.

12                   HEARING EXAMINER:     Thank you, Mr. Munn.  
13                   Mr. Mittle, any questions of the witness?

14                   MR. MITTLE:    Yes, ma'am.

15

16                                   CROSS-EXAMINATION

17     BY MR. MITTLE:

18           Q.     Good afternoon, Ms. Roth.

19           A.     Good afternoon.

20           Q.     The question is the Leap press release as an  
21     exhibit that Qwest was to do so?

22                   MR. MUNN:     I don't think it's necessary  
23     to for her to read it

24     BY MR. MITTLE:

25           Q.     Okay.  Do you have a copy in front of you?



1 A. I do.

2 Q. Do you recall Mr. Badal talking about 7  
3 percent of Cricket's customers, referring to an  
4 Albuquerque Journal article?

5 A. Yes.

6 Q. Do you recall Mr. Badal testifying that that  
7 was 7 percent of the Albuquerque market?

8 A. Yes, I do.

9 Q. Do you know the date of that article?

10 A. Let's see. I think the Albuquerque Journal  
11 article was September 2001, but I can't recall the  
12 exact date.

13 Q. Maybe this would help (indicating).

14 A. (Witness refers to document.)

15 Q. Does that help your recollection of the date  
16 of the Albuquerque Journal article?

17 A. February 20 -- what I'm looking at is a  
18 February 22nd, 2001, Albuquerque Journal article. It  
19 does have the quote that I recall being discussed  
20 yesterday.

21 Q. Right. Okay. So the article's date was  
22 February -- I don't recall.

23 A. February 22nd, 2001.

24 Q. Okay. So based on your experience and  
25 expertise, do you believe that between February 14th,

1 2001, and February 20th, 2001, Cricket was able to get  
2 7 percent of the Albuquerque market?

3 A. In about a week?

4 Q. Yes.

5 A. I would say that that is virtually  
6 impossible.

7 Q. And you understood -- or did you understand  
8 Mr. Badal to testify that that number was -- he  
9 reached his understanding that Cricket had 7 percent  
10 of the Albuquerque market based on the sentence in  
11 that article?

12 A. That is my recollection.

13 Q. When you read that sentence -- if you could  
14 read it out loud?

15 A. From the Albuquerque Journal February 22nd,  
16 2001, I believe the sentence you are asking me to read  
17 is a quote from the general manager. I'm not seeing  
18 -- John Clark. Mr. Clark's quote is:

19 One thing we are noticing is over 7  
20 percent of our customers are cutting their  
21 home phone service.

22 Q. When you read that, do you read that to mean  
23 that that's 7 percent of the Albuquerque market, 7  
24 percent of Cricket's customers, or how do you read  
25 that sentence? Or maybe you have no opinion?

1           A.    I have an opinion.  I wanted to check this  
2   press release quickly to see if there was any mention  
3   of the 7 percent in the press release but I don't see  
4   that quickly.

5                   I believe, and I heard a lot of testimony  
6   yesterday and there was also a mention of some other  
7   reports.  I believe that 7 percent is a Cricket number  
8   that they are using across all of their markets and is  
9   a national number.  It's more or less -- in my view,  
10   it's a marketing number.  They are looking to attract  
11   customers and they are looking to attract investors.  
12   By saying positive things about their service, that  
13   helps them toward both of those causes.

14          Q.    Thank you.  Now I would like to direct your  
15   attention to Page 5 of your testimony.

16          A.    (Witness refers to document.)  Okay.

17          Q.    There's a question that starts on Line 7.

18          A.    Okay.  I just wanted to make sure that since  
19   this is a pink page -- but that is a non-proprietary  
20   question.  Go ahead.

21          Q.    You were present yesterday when Mr. Badal  
22   testified that there has now been a further decrease  
23   in the number of Qwest residential access lines in New  
24   Mexico?

25          A.    I heard that testimony, yes.

1 Q. And do you consider that decrease or having  
2 knowledge of that information, does it change your  
3 response to the question asked on Page 5, Line 7, or  
4 would it change your response in any other way?

5 A. It wouldn't change my response. I would say  
6 that we really don't know the cost. Mr. Badal  
7 testified that Qwest's access line base had decreased  
8 a little bit more. I think that there could be a wide  
9 variety of reasons as to why, some of them including  
10 the general economy, unemployment in the State of New  
11 Mexico, the suspensions in disconnections for  
12 non-payment of Qwest, use of DSL services. There  
13 could be many reasons and I can't conclude what that  
14 reason is in my testimony. But I can think about and  
15 use my expertise in the telecommunications industry  
16 and experience to come up with sort of a full plate of  
17 what those could be if somebody wanted to really study  
18 the reason.

19 Q. Right. Because cell phones aren't relevant  
20 for the purposes of Track A, are they? There's a  
21 specific exception in the --

22 A. The specific exception is PCS.

23 Q. So it's only PCS. So if somebody else  
24 subscribes to a different cell phone that is not  
25 relevant for purposes --

1           A.     That's my understanding.

2                     MR. MITTLE:   Thank you.   No further  
3 questions.

4                     HEARING EXAMINER:   Ms. Reilly, any  
5 questions?

6                     MS. REILLY:   No questions.

7

8                                     EXAMINATION

9

10       BY THE HEARING EXAMINER:

11           Q.     I just have a couple of questions for you,  
12 Ms. Roth.

13                     In response to Mr. Mittle's question --  
14 because this is something that was -- he asked  
15 questions about yesterday, the 7 percent number on  
16 Cricket.

17                     I believe you just testified that it's  
18 your belief based on, I guess, your reading of the  
19 article and your expertise, that 7 percent is a  
20 marketing number?

21           A.     Yes.

22           Q.     What's a marketing number?

23           A.     I could have said a marketing number, a  
24 public relations number, an advocacy kind of number, a  
25 national average number.   Those were all, in my mind,

1 roughly about the same.

2 I think we heard yesterday there was -- or  
3 maybe it was today -- the 7 percent used in context  
4 with one of the southern -- Tennessee, Chattanooga.

5 So when I'm hearing 7 percent from a study  
6 that was from a particular state and broad use of 7  
7 percent in response to or in an Albuquerque Journal  
8 article, my logic tells me that's a national number  
9 used for the purposes of press relations, marketing  
10 and that it truly is a national average kind of a  
11 number.

12 Q. Well, the question that comes to my mind when  
13 you say it's a national, it's a market number, is it a  
14 real number? Is it a fictitious number? Is it a  
15 target number? I need more explanation.

16 A. Okay.

17 Q. You know, you say, well, it's a marketing  
18 number or whatever. I mean, if you add up the number  
19 of people, are we actually going to have a customer  
20 that will translate into some type of figure like a 7  
21 percent?

22 A. The only entities that can truly answer your  
23 question and explain exactly what 7 percent represents  
24 is Cricket.

25 Q. Okay.

1           A.     We can all interpret what we may think 7  
2 percent means. My interpretation is that it is a  
3 number that they seem to be using consistently. I  
4 therefore believe or would interpret that it  
5 represents a national number.

6           Q.     Okay. Would you look at your testimony at  
7 Page 6, Lines 14 through 16.

8           A.     (Witness refers to document.) Yes.

9           Q.     There you indicate that the decrease in  
10 nearly all or all of the decrease in residential  
11 access lines cited by Mr. Badal could have resulted  
12 from lines disconnected because the bills were not  
13 paid.

14                     Why do you come to that conclusion?

15           A.     I have to be careful with the response  
16 because it's proprietary information to Qwest.

17           Q.     All right.

18           A.     Attachment 4 to my testimony is on a pink  
19 page. I'll try to refrain from saying anything  
20 confidential, and if I do speak of a number I will  
21 very much try to give you a warning.

22           Q.     Okay. I see it.

23           A.     Bear with me one second.

24           Q.     This attachment is what?

25           A.     Attachment 4 and it came from a data -- it's

1 a data request response.

2 Q. Okay.

3 A. Okay. Now, this number that I'm going to  
4 mention is not proprietary. In Mr. Badal's testimony  
5 he notes that there was a decrease in Qwest's access  
6 lines, residential access lines, of 3,014. AT&T asked  
7 a data request and that data request was to take that  
8 same time period and ask how many residential accounts  
9 were either suspended or disconnected for non-payment  
10 of the service.

11 Q. And that's what is represented on Attachment  
12 4?

13 A. That's the proprietary pink page Attachment  
14 4.

15 Q. And that's the basis for your statement at  
16 Lines 14 through 16?

17 A. That's correct.

18 HEARING EXAMINER: Mr. Witt, any Redirect  
19 of your witness?

20 MR. WITT: Actually, just one very minor  
21 matter.

22  
23 REDIRECT EXAMINATION  
24

25 BY MR. WITT:



1           Q.    Ms. Roth, in your conversation with the  
2   Hearing Examiner concerning the national Cricket  
3   number, you indicated two things that I heard.  First,  
4   that it was a national number and, second, that you  
5   questioned the accuracy of that number.

6                    Am I correct there?

7           A.    Yes, I believe it's a national number.  I  
8   would just maybe explain the second piece just a  
9   little bit.

10          Q.    Well, for example, could the accuracy of that  
11   number depend on the number of markets that Cricket is  
12   actually in, for example?

13          A.    Yes, it could.

14                   MR. MUNN:    Objection; leading.

15                   THE WITNESS:   Yes, it could and I think  
16   the thing that I said --

17                   MR. MUNN:    Objection.

18                   HEARING EXAMINER:   Well, she had answered  
19   it before you got through, but why don't you go ahead  
20   and explain in addition to you think it's a national  
21   number what -- if you have some further explanation as  
22   to what that should mean to the Commission.

23                   THE WITNESS:   Okay.  I believe it's a  
24   national number and it could be influenced over time  
25   by the number of markets, by the degree of success

1 that Cricket has.

2 The other thing that I would reiterate  
3 that we talked about in our exchange is that only  
4 Cricket knows for sure what that number means, how it  
5 was derived. That's what I think the Commission  
6 should know about that number.

7 HEARING EXAMINER: All right. Thank you.  
8 Mr. Witt?

9 MR. WITT: Thank you. I have no further  
10 questions.

11 HEARING EXAMINER: Mr. Munn?

12 MR. MUNN: No questions.

13 HEARING EXAMINER: Mr. Mittle?

14 MR. MITTLE: No, thank you.

15 HEARING EXAMINER: Ms. Reilly?

16 MS. REILLY: No questions.

17 HEARING EXAMINER: You are excused.

18 Thank you very much.

19 Mr. Witt, anything further?

20 MR. WITT: Nothing further, Your Honor.

21 HEARING EXAMINER: Thank you.

22 Mr. Mittle, I don't believe you have a  
23 witness in the proceeding?

24 MR. MITTLE: No, ma'am.

25 HEARING EXAMINER: And you are not going

1 to ask me to testify, so all right.

2 Since Mr. Mittle is not going to testify,  
3 I believe Staff, Ms. Reilly, your witness.

4 MS. REILLY: Staff calls Michael  
5 Ripperger.

6  
7 MICHAEL RIPPERGER

8 The witness herein, after having been  
9 first duly sworn upon his oath, was  
10 examined and testified as follows:

11  
12 DIRECT EXAMINATION

13  
14 BY MS. REILLY:

15 Q. Good afternoon, Mr. Ripperger.

16 A. Good afternoon, Ms. Reilly.

17 Q. You are the Michael Ripperger who filed  
18 testimony, Track A testimony in this proceeding on  
19 December 31st, 2001.

20 Is that right?

21 A. That's correct.

22 Q. And you have that testimony with you?

23 A. Yes.

24 (Whereupon, a document was marked

25 STAFF EXHIBIT 1 for identification.)

1 BY MS. REILLY:

2 Q. We have marked the public version of your  
3 testimony as Staff Exhibit 1. Is the document that  
4 we've marked as Staff Exhibit 1 a true and correct  
5 copy of the public version of your Track A testimony?

6 A. It is. There needs to be one change.

7 Q. And what is that change?

8 A. That would be, I believe it's Exhibit D,  
9 which is Qwest's annual report for December 30th.

10 Q. In what respect does Exhibit D need to be  
11 treated differently?

12 A. In the public version it was stamped  
13 confidential. It is not confidential.

14 Q. Okay. So if we were to take a copy of  
15 Exhibit MSR-D from the confidential version, mark  
16 through the word confidential and insert it into the  
17 public version, would that correct the problem?

18 A. Yes, it would.

19 MS. REILLY: He's done that.

20 BY MS. REILLY:

21 Q. Do you have any other corrections to your  
22 testimony?

23 A. No, I do not.

24 Q. We also filed both a confidential version of  
25 your testimony and a highly confidential version of

1 your testimony on December 31st, 2001.

2 Is that right?

3 A. That's correct.

4 Q. We have marked the confidential version of  
5 your testimony as Staff Exhibit 1-A.

6 (Whereupon, a document was marked  
7 STAFF EXHIBIT 1-A for identification.)

8 BY MS. REILLY:

9 Q. That version of your testimony contains  
10 confidential material which is subject to the terms of  
11 the initial Protective Order in this case and redacts  
12 highly confidential material subject to the terms of  
13 the Supplemental Protective Order.

14 Is that right?

15 A. That's correct.

16 Q. And the highly confidential version of your  
17 testimony that we've marked as Staff Exhibit 1-B  
18 contains both confidential and highly confidential  
19 material subject to the terms of the initial  
20 Protective Order and the Supplemental Protective Order  
21 respectively.

22 Is that right?

23 A. That's correct.

24 (Whereupon, a document was marked  
25 STAFF EXHIBIT 1-B for identification.)

1 BY MS. REILLY:

2 Q. And the content of your testimony in all its  
3 versions is true and correct to the best of your  
4 knowledge, information and belief, is it not?

5 A. Yes, it is.

6 Q. And if you were asked the same questions  
7 today that you were asked and that you answered in  
8 your testimony, would your answers be the same?

9 A. Yes, they would.

10 MS. REILLY: We move admission of Staff's  
11 Exhibit 1, 1-A and 1-B with Staff Exhibit 1-A subject  
12 to the terms of the initial Protective Order and  
13 Staff's Exhibit 1-B subject to the terms of the  
14 Supplemental Protective Order.

15 HEARING EXAMINER: Mr. Ripperger, do you  
16 have any corrections, addition or deletions to those  
17 particular versions?

18 THE WITNESS: No, I do not.

19 HEARING EXAMINER: Are there any  
20 objections to what has been identified and, at least,  
21 Staff 1 corrected here today to Staff Exhibit 1, 1-A  
22 or 1-B?

23 (Whereupon, a brief discussion was  
24 held off the record.)

25 MR. MITTLE: Just a point of

1 clarification, Madam Hearing Examiner. The difference  
2 between the confidential and the highly confidential,  
3 can you refer me to what pages are highly  
4 confidential?

5 THE WITNESS: Are you talking about  
6 throughout -- in the confidential version, all of the  
7 parts of the confidential testimony that are --

8 MR. MITTLE: I'm not sure whether they are  
9 confidential or highly confidential. So I was  
10 wondering do you use highly confidential in your  
11 actual testimony or is part of the highly confidential  
12 your exhibits or is there an easy way for you to  
13 describe it to me?

14 THE WITNESS: In the highly confidential  
15 version, you will see that when you go through the  
16 testimony in those areas that are highly confidential,  
17 it will say highly confidential, but the material will  
18 be contained in there. Then later on, you will see  
19 confidential. So all that material will be contained.  
20 If you have a confidential version, when you get to  
21 those excerpts that say highly confidential, they will  
22 be Xed out.

23 MR. MITTLE: I see. Okay. Thank you.

24 HEARING EXAMINER: An objection?

25 MR. OLSON: No. Without double-teaming, I

1 also wanted to also make one clarification in case we  
2 get into this.

3 Qwest is -- there are two versions of the  
4 Supplemental Protective Order, one of which relates to  
5 the Intrado data that the Hearing Examiner entered and  
6 as to which Qwest has access subject to the disclosure  
7 of who has access.

8 On the other version that was entered by  
9 the Commission -- or I should say, the original  
10 version was entered by the Commission and pertains to  
11 the survey responses. As to that only one Qwest  
12 attorney is permitted access. I think those are  
13 Exhibits E, N and P is my gauge of Mr. Ripperger's  
14 testimony. So that if there is any Cross-Examination  
15 about those, we need to be alerted so that we can make  
16 the appropriate exits here. Otherwise, I take it all  
17 of the Qwest people are signed up on all of the  
18 confidentiality requirements.

19 HEARING EXAMINER: Okay. And we gave  
20 Mr. Munn a variance yesterday.

21 MR. OLSON: Yes. I meant there's two sets  
22 of highly confidential data, one of which the rest of  
23 us for Qwest are not privy to.

24 HEARING EXAMINER: All right. I  
25 appreciate that, Mr. Olson. Hearing no objection,



1 what's been identified as Staff 1, 1-A and 1-B will be  
2 admitted into the record and, Pat, I will rely on you  
3 to seal both 1-A and 1-B and identify one as  
4 confidential and one as highly confidential. We will  
5 figure out if we have to get into highly and super  
6 highly information. We will worry about that later.

7 (Whereupon, STAFF EXHIBITS 1, 1-A  
8 and 1-B were admitted into evidence, a  
9 copies of which may be found under  
10 separate cover.)

11 HEARING EXAMINER: Ms. Reilly?

12 MS. REILLY: We tender Mr. Ripperger for  
13 Cross-Examination. I have extra copies of the  
14 testimony if anybody needs it.

15 HEARING EXAMINER: Which kind?

16 MS. REILLY: I have a few of the  
17 confidential ones and a lot of the public ones.

18 HEARING EXAMINER: All right. I believe  
19 Mr. Medeiros would care for one.

20 Mr. Munn, any questions of this witness?

21 MR. MUNN: Yes, Your Honor.

22  
23 CROSS-EXAMINATION  
24

25 BY MR. MUNN:

1 Q. Good afternoon, Mr. Ripperger.

2 A. Good afternoon, Mr. Munn.

3 Q. Mr. Ripperger, would you agree that based on  
4 the Commission's November 6th Order on Track A that  
5 the purpose and scope of this hearing is limited to  
6 evaluating the residential class of service for Track  
7 A in this state?

8 A. If I could, could I have a copy of that? Is  
9 there a copy of that somewhere that I could have?

10 Q. I can probably find one.

11 MS. REILLY: I can give him mine.

12 MR. MUNN: Okay. Thank you.

13 MS. REILLY: (Hands document to witness.)

14 BY MR. MUNN:

15 Q. This would be the November 6th Procedural  
16 Order.

17 A. (Witness refers to document.)

18 Q. My question really doesn't go to any  
19 particular revision of that. I was asking your  
20 understanding about the purpose and scope of this  
21 hearing. Is it to address the residential Track A  
22 market in New Mexico?

23 A. I believe that the Procedural Order was in  
24 response to the submission of further evidence from  
25 Qwest concerning Track A and Qwest's response to the

1 facilitator's findings and his report on the Group 5  
2 report. There is mention here not only of reviewing  
3 residential competition in the state but also its  
4 implications on the public interest.

5 Q. Mr. Ripperger, is it fair to say that you  
6 have not presented any evidence of your own about the  
7 actual CLEC market share in New Mexico for the  
8 residential market?

9 A. What I've done is reviewed the evidence that  
10 Qwest has presented on what they believe the  
11 residential market share is in the state. Upon my  
12 review, I revised what I believe are Qwest's  
13 representations as to the amount of residential  
14 service in the state.

15 Q. You have responded to Qwest's testimony;  
16 right?

17 A. Yes.

18 Q. And again, I want to make clear I'm not  
19 throwing stones. I'm just trying to verify that  
20 there's not some independent analysis of market share  
21 that you are presenting or independent evidence of how  
22 many access lines a particular customer has in the  
23 state. I mean, you are responding to what Qwest put  
24 forward. Is that fair?

25 A. Well, in responding to what Qwest has put

1     forth, it also addressed the issue or the concept of a  
2     de minimis number of customers in the state. So how  
3     that relates to market share may be one thing.

4             But my testimony did definitely address  
5     the number of residential customers being served by a  
6     variety of means that Qwest has put forth in its  
7     testimony.

8             Q.     Mr. Ripperger, you would agree, would you  
9     not, that in the BellSouth Louisiana 2 Order, which  
10    we've discussed in the last two days quite a bit, that  
11    the FCC found in that Order that the best reading of  
12    Track A is that if there is business facilities-based  
13    competition in this state that the residential  
14    component of Track A could be satisfied wholly through  
15    resale?

16            A.     I believe that they said that it would be --  
17    they would consider resale, which is different than  
18    they would actually approve the resale.

19            MR. MUNN:   Your Honor, may I approach?  
20    I'm looking at Paragraph 48 in the BellSouth Louisiana  
21    2 Order.

22            HEARING EXAMINER:    Sure.

23            MR. MUNN:    But you have a copy of that?

24            THE WITNESS:   I've got a copy of that.

25            HEARING EXAMINER:    Paragraph?

1 MR. MUNN: It's Paragraph 48 on Page 36.

2 THE WITNESS: Did you say Page 46?

3 BY MR. MUNN:

4 Q. No, I'm sorry. It's Paragraph 48, Page 36.

5 A. (Witness refers to document.)

6 Q. Just kind of keeping that thought in mind,  
7 I'd like to ask you sort of a foundational question.

8 Mr. Ripperger, you would agree, would you  
9 not, that the New Mexico Commission should implement  
10 the FCC's test for Track A as well as other relevant  
11 FCC precedent.

12 Isn't that accurate?

13 A. Well, yes. I believe that the Commission  
14 should review the FCC's evaluation that the other BOCs  
15 have gone through in the FCC's Track A analysis.

16 Q. In fact, at Page 9 of your testimony at Line  
17 20, you actually agree, don't you sir, that the  
18 Commission should refer to and implement the four-part  
19 test established by the FCC in the Ameritech Michigan  
20 Order as well as other relevant FCC precedent that you  
21 refer to in analyzing whether Qwest satisfies Track A  
22 in New Mexico?

23 A. In that Order -- that is the Order which --  
24 the Ameritech Michigan Order was the Order in which  
25 the FCC laid out comprehensively the evaluation of

1 Track A.

2 Q. Right. And what I just read is your  
3 testimony that you have prefiled; correct?

4 A. Yes.

5 Q. And are you backing away from that testimony  
6 today or do you still stand by that?

7 A. Now, you are asking me whether or not the  
8 Commission should use the four-part test used in the  
9 Ameritech Michigan Order. Then separately, you  
10 reference a Paragraph 48. Is it Paragraph 48?

11 Q. We are not there yet. I'm simply asking you  
12 about -- I assume you are not backing away?

13 A. No, absolutely not.

14 Q. We just read from Page 9, Lines 20 through 23  
15 of your testimony. That's still your testimony today;  
16 correct?

17 A. Lines 20 through 24 or so, you mean?

18 Q. Yes. Our pagination may be different, but it  
19 was the phrase beginning with, quote, 'like the  
20 multi-state facilitator, the Commission should refer  
21 to and implement the four-part test' and it goes on?

22 A. Yes.

23 Q. And you mention there, not only the four-part  
24 test from the Ameritech Michigan Order, but other  
25 relevant FCC precedent.

1                   Isn't that your testimony?

2           A.     Yes.

3           Q.     Okay. I would like for you to look at  
4 Paragraph 48. Since you've indicated that you thought  
5 that there was just some intimation about resale  
6 residential competition being -- I'd like for you to  
7 read into the record beginning with 'we note,' the  
8 very beginning of Paragraph 48?

9           A.     This is the Ameritech Michigan Order,  
10 Paragraph 48.

11          Q.     If I said Ameritech Michigan, that is a  
12 mistake and I apologize. It should be the BellSouth  
13 Louisiana 2 Order. I apologize.

14          A.     Oh, I'm sorry.

15          Q.     It's the one we were looking at before I  
16 asked you the question about your testimony.

17          A.     Right. You want me to read from Paragraph  
18 48?

19          Q.     Correct.

20          A.     From where it starts 'we note'?

21          Q.     Yes, sir.

22          A.     We note, however, that reading the statutory  
23 language to require that there must be  
24 facilities-based service to both classes  
25 of subscribers to meet Track A could

1           produce anomalous results. There appear  
2           to be overriding policy considerations  
3           that lead to a contrary construction of  
4           the statutory language. In particular, if  
5           all of the requirements of Section 271  
6           have been satisfied, it does not appear to  
7           be consistent with Congressional intent to  
8           exclude a BOC from the inter-region  
9           interLATA markets solely because the  
10          competitor service for residential  
11          customers is wholly through resale.

12                 In reading that, this said -- in reading  
13          that they said that they would consider resale. It's  
14          implied in that paragraph.

15                 But the question is whether or not in  
16          considering resale any of the BOC applications to the  
17          FCC have passed on the basis of resale.

18          Q.     Mr. Ripperger, you are not an attorney, are  
19          you?

20          A.     No.

21          Q.     So when you testified, you discussed in, I  
22          think, your written testimony, and we certainly heard  
23          a lot of questions today, about the fact that a  
24          particular Order wasn't granted or not, is it fair to  
25          say you're not aware of the legal effect -- what the



1 legal effect is of an FCC Order in which the ultimate  
2 271 Application was denied?

3 MS. REILLY: I object. This Counsel has  
4 asked this witness to comment on this case and on this  
5 paragraph and he should not now be entitled to impeach  
6 the witness' understanding of the FCC precedent that  
7 he has asked him to testify to.

8 MR. MUNN: Okay. I guess, first, I think  
9 I'm always entitled to impeach the witness. Secondly  
10 -- and I'm not doing that. I'm simply verifying that  
11 -- I don't need to ask a new line of questions. I  
12 mean, this is not related to my old line of questions.  
13 It would be a new line regarding the legal effect of  
14 the FCC denying a 271 Application and what effect that  
15 has on all of the pronouncements that the FCC has made  
16 in that Order. I'm making an assumption. I don't  
17 need to ask those. This witness is not an attorney.  
18 He's already told me that.

19 So there is testimony about that and I  
20 want to confirm that that can be a briefing point. I  
21 don't believe the witness is qualified. If he thinks  
22 he is I would be willing to hear the interpretations  
23 of Staff witness about the legal effect of a 271 Order  
24 such as BellSouth Louisiana 2 that was ultimately  
25 denied.

1 MS. REILLY: I would also add that both  
2 Mr. Teitzel and Mr. Badal testified to the legal  
3 effect of 271 Orders.

4 MR. MUNN: I would say that neither of  
5 them are attorneys, either, and your brief is going to  
6 be the place where you are going to address legal  
7 effect. I think his testimony sort of got into that  
8 some in the written testimony. If he somehow feels he  
9 is qualified to do that, I need to explore it.

10 HEARING EXAMINER: And your question was  
11 does Mr. Ripperger know the legal effect of an FCC 271  
12 Order?

13 MR. MUNN: No. Actually, the question is  
14 -- because there's been quite a bit of discussion, it  
15 seems like, also with Cross questions but also in  
16 Mr. Ripperger's testimony as well where he would  
17 criticize an FCC Order being relied on for  
18 precedential value because the Order itself is denied.  
19 As a lawyer, I think there's a lot we can glean from  
20 the Orders that are denied.

21 MS. REILLY: I will object to that  
22 representation of Mr. Ripperger's testimony.

23 MR. MUNN: I'm interested in if he thinks  
24 he's qualified to do that. If he's not, I'm ready to  
25 move on.

1 HEARING EXAMINER: At this point, there  
2 have been so many representations by all of the  
3 witnesses in this case to all of these FCC cases that  
4 you have provided for me and everybody seems to be  
5 picking and choosing the one phrase that they like  
6 about it and disregarding the others. So I'm sort of  
7 at a loss at this point.

8 I'll overrule the objection and,  
9 Mr. Ripperger, you can -- since everybody else has  
10 already testified to all these FCC Orders, if he can  
11 answer Mr. Munn's question, please do so.

12 THE WITNESS: Would you rephrase the  
13 question again?

14 BY MR. MUNN:

15 Q. Sure. Mr. Ripperger, are you here to provide  
16 testimony that an FCC -- or are you here to provide  
17 testimony about what the legal effect is of an FCC  
18 Order that is denied when an Application to the FCC is  
19 denied, what precedential value that Order may have on  
20 the information provided by the FCC?

21 A. My testimony has provided my interpretation  
22 of what I see as some of the history behind Track A.  
23 Then I've also gone into my interpretation of FCC  
24 Orders and what I would read of them, not from any  
25 kind of expert legal background, but simply from a

1 background of a witness who needs to provide some sort  
2 of a history in evaluating evidence and the legal  
3 precedent that Qwest has put forth in its testimony.

4 Q. So I'm not hearing a no there, so let me ask  
5 you another question. Mr. Ripperger, is it your  
6 opinion that if the FCC denies a 271 Application --  
7 let's take Ameritech Michigan as an example.

8 A. Yes.

9 Q. -- that it is of no precedential value for  
10 determination about what is required to meet 271  
11 requirements?

12 MS. REILLY: I object. This is beyond the  
13 scope of this witness' testimony. He never once said  
14 a case did or didn't have precedential value. The  
15 witness testified and if you can point me to a place  
16 in his testimony where he said something does not have  
17 precedential value, I will stand corrected.

18 The witness testified that Qwest's  
19 representation that the FCC had held that the  
20 residential component of Track A could be satisfied  
21 solely through resale was wrong because in the case  
22 where that language appeared, the FCC did not approve  
23 the Order based on resale. That is not saying it has  
24 no precedential value because the Application was  
25 denied. That goes straight to refuting what Qwest has

1 offered the case for on a factual basis.

2 MR. MUNN: I stand by my statements. I  
3 think Mr. Ripperger has been critical that we have --  
4 that Qwest has relied on FCC Orders in which the  
5 ultimate decision was denial of the FCC Application.  
6 I don't agree that there's any basis for criticizing  
7 someone for looking at an FCC Order and what it says  
8 is required. I'm trying to find out if he's still  
9 standing by that and explore that position.

10 HEARING EXAMINER: Mr. Ripperger, in your  
11 testimony did you testify as to precedential value of  
12 any of these cases?

13 THE WITNESS: No, not as far as -- no,  
14 not in a legal precedential value. I evaluated FCC  
15 Orders or I looked at them to get an idea of what the  
16 FCC had decided and put together -- like m for  
17 Cricket, some sort of historical background to their  
18 decisions. I looked at the basis for their decisions  
19 and how they weighed the evidence.

20 HEARING EXAMINER: Your objection is  
21 sustained. Next question, Mr. Munn.

22 BY MR. MUNN:

23 Q. Mr. Ripperger, I'd like you to turn to Page  
24 11 of your testimony.

25 A. (Witness complies.)

1 Q. The question and answer on that page I'd like  
2 for you to look at just so you are familiar with it.  
3 When you are, I'd like to ask you a question.

4 A. (Witness refers to document.) Okay.

5 Q. Mr. Ripperger, wouldn't you agree that what  
6 is important about what the FCC said in the BellSouth  
7 Louisiana 2 Order or any Order is what would be  
8 required to meet the Track A test?

9 A. If the FCC had stated that there were certain  
10 elements germane to meeting a Track A test, then they  
11 have said what they have said.

12 Q. Thank you. At Page 15 of your Rebuttal  
13 Testimony, Line No. 8, you made the statement there on  
14 Line No. 8 that Mr. Teitzel also seems to be backing  
15 away from Qwest's previous claim that resale-based  
16 CLECs served 3,064 residential access lines via resale  
17 in New Mexico.

18 Did I accurately read Lines 8 and 9 of  
19 your testimony?

20 A. Yes.

21 Q. Mr. Ripperger, you do understand, do you not,  
22 that the 3,064 residential resale number for New  
23 Mexico was at a particular snapshot in time?

24 A. Yes.

25 Q. That being April 30th, 2001; correct?

1 A. Yes.

2 Q. How long have you worked in the  
3 telecommunications industry?

4 A. I've worked with Staff here for  
5 three-and-a-half years. I've been involved in  
6 telecommunications for a little over two years.

7 Q. So is it fair to say that the numbers for,  
8 say, a residential resale number in New Mexico would  
9 be a dynamic number?

10 A. I would think that any number for any number  
11 of customers through any mode of service would be  
12 dynamic.

13 Q. Okay. And it may be that I've just kind of  
14 read your testimony wrong. You used the term backing  
15 away?

16 A. Yes.

17 Q. Like we are somehow retreating from the 3,064  
18 number. So let me just ask you this question: Do you  
19 have any evidence that Qwest is backing away from the  
20 testimony that's in the record that as of April 30th,  
21 2001, there were 3,064 residential resale lines in New  
22 Mexico?

23 A. I would say that Qwest has updated and  
24 affirmed the fact that the number of residential  
25 resale lines has been reduced over time.

1 Q. My question to you was: Do you have any  
2 evidence that Qwest is backing away that as of April  
3 30th, 2001, the number was 3,064?

4 A. No, not as of that date, no.

5 Q. Mr. Ripperger, you would agree, would you  
6 not, that one CLEC, Comm South, as of November 15th,  
7 2001, was providing 1,369 residential resale lines in  
8 Qwest's service territory in New Mexico?

9 MS. REILLY: Can the witness be given a  
10 cite?

11 MR. MUNN: Sure.

12 MS. REILLY: There are a great many facts  
13 and numbers in this case.

14 MR. MUNN: Fair enough.

15 BY MR. MUNN:

16 Q. Mr. Ripperger, you can turn to your  
17 Attachment B to your testimony. You can also turn to  
18 Page 15, Lines 17 through 18.

19 A. (Witness refers to document.)

20 Q. When you look at those, I'll ask the question  
21 again if that would help.

22 A. You said how many?

23 Q. 1,369.

24 A. You said Exhibit C?

25 Q. It's Exhibit B, Exhibit MSR-B. It's the Comm



1 South data request response to Track A local exchange  
2 service survey. It's actually No. 3 on that page.

3 A. Right. I see.

4 Q. Okay. So after reviewing that, you would  
5 agree, would you not, that one CLEC, Comm South, is  
6 providing 1,369 residential resale lines in Qwest's  
7 service territory in New Mexico as of November 15th,  
8 2001?

9 A. Yes, that's the date I believe they submitted  
10 that.

11 Q. Mr. Ripperger, are you aware that -- I think  
12 the record is undisputed that Cricket is offering  
13 broadband PCS service in the Albuquerque and New  
14 Mexico (sic) markets in New Mexico.

15 Is that correct?

16 A. I think that's safe to say.

17 Q. I'm eliminating questions. You've actually  
18 answered some in your earlier discussion.

19 A. Okay.

20 Q. Mr. Ripperger, let's turn to Cricket service,  
21 if you will, for a minute. Would you agree that a  
22 broadband PCS service such as Cricket can compete with  
23 Qwest's wire-line service even if the customer at  
24 issue does not disconnect their Qwest land line?

25 A. I have no idea. I mean, I would need to be

1 presented with the proper evidence that would actually  
2 show that a Cricket customer has either substituted  
3 their Qwest land line or foregone a future line, Qwest  
4 line for Cricket. And I have seen no evidence in that  
5 regard.

6 Q. Okay. So I think your answer to my question,  
7 you have -- while not answering yes, I think you have.  
8 Let me explore your answer a little bit more.

9 You have said that foregoing acquiring  
10 another Qwest line would, in your mind -- if you saw  
11 evidence of that -- would be replacing Qwest's service  
12 with Cricket service; correct?

13 A. I mean, if I saw the appropriate type of  
14 evidence, and the appropriate type of evidence has  
15 been laid out in the BellSouth Louisiana Order, the  
16 second one.

17 Q. Mr. Ripperger, I'm not asking you to make a  
18 decision about evidence or what evidence has been  
19 presented. Let me be clear. Let me ask you a  
20 hypothetical, so you're not concerned about actual  
21 evidence.

22 Hypothetically, if a customer purchased  
23 Cricket PCS service instead of purchasing a Qwest  
24 second line, that would be an example of Cricket PCS  
25 service replacing a Qwest land-line service; correct?

1           A.     That would be an example.

2           Q.     Also, if, for example, a customer keeps a  
3     Qwest -- and this is a hypothetical again. I'm not  
4     saying that I'm presenting new evidence in my  
5     question.

6           A.     Sure.

7           Q.     If a customer keeps a Qwest wire-line for  
8     data because they have only one line in their house  
9     and they decide, hey, this Internet thing with my  
10    dial-up connection is a really neat deal and I like to  
11    surf the net alot but it's kind of a problem because I  
12    only have one phone line and I need to talk to people,  
13    talk to mom or whatever they want to do. So they  
14    decide, okay, I'm going to keep my Qwest wire-line but  
15    instead of getting a second Qwest line for voice,  
16    I'll use Cricket PCS for voice and just use my regular  
17    Qwest line for data.

18                    Wouldn't that also be an example of a  
19    replacement of Cricket for a wire-line service?

20           A.     Hypothetically speaking.

21           Q.     If someone, certainly, disconnects a Qwest  
22    wire-line altogether, that would be an example;  
23    correct?

24           A.     If a person is using one form of  
25    telecommunications service and instead opts for

1 another form of telecommunications service, then that  
2 would be a substitution.

3 Q. Great. And are there additional instances  
4 where no disconnect would be involved? I just want  
5 to make sure that I understand what your testimony is  
6 regarding Cricket.

7 Say, someone new comes to the Santa Fe  
8 area so they have never had a residence here and  
9 instead of signing up for Qwest's wire-lines so there  
10 is no disconnect at all, they sign up off the bat with  
11 Cricket service.

12 That would also be a replacement for  
13 wire-line service; correct?

14 A. It would depend upon what that person  
15 intended to use the service for or how they  
16 characterized it. It could be temporary, whereas they  
17 would possibly get a Cricket phone, but always intend  
18 to get a Qwest land-line phone. Then it would not be  
19 a substitute. It really depends on whether or not  
20 that customer would consider that good to be a  
21 substitute.

22 Q. Fair enough. So let's say in the  
23 hypothetical would the customer who just moved to  
24 Santa Fe from out-of-state never signs up for a Qwest  
25 wire-line, doesn't want one, they sign up for Cricket

1 service and that's their voice line, and that's what  
2 they use, that would be considered a replacement of a  
3 land-line even though there is no disconnect; correct?

4 A. If you are saying in the absence of Cricket  
5 that they would get a Qwest wire-line but instead they  
6 come to town and there is available both Cricket and  
7 Qwest, but instead of getting Qwest wire-line, they  
8 get Cricket, that would be considered a substitute.

9 Q. You bring up the point Qwest land-line, just  
10 to be clear, that would be a substitute for wire-line  
11 telephony whether they said, I was going to sign up  
12 for CLEC XYZ's wire-line service or Qwest's wire-line.  
13 It doesn't matter it was Qwest. They are replacing  
14 wire-line service with Cricket in that hypothetical;  
15 correct?

16 A. It really depends upon what that person's  
17 original intent would have been for wire-line service.  
18 It could be that they come to town and consider both  
19 Qwest wire-line and Cricket to be complements whereby  
20 they would never substitute one for the other. But  
21 they would come to town and purchase Cricket service  
22 and not purchase Qwest's wire-line. It really depends  
23 upon what that customer considers the product to be.

24 Q. Mr. Ripperger, you would agree, sir, that in  
25 the BellSouth Louisiana 2 Order at Paragraph 31 that

1 the FCC stated that evidence of marketing efforts by  
2 broadband PCS providers designed to induce such  
3 replacement are also relevant.

4 Isn't that correct?

5 A. In the universe of their considerations of  
6 evidence for the replacement of wire-line service with  
7 broadband PCS service, that is one of the  
8 considerations.

9 Q. And my question is not is that the entire  
10 universe. My question is didn't the FCC say marketing  
11 efforts would be relevant?

12 A. Yes.

13 Q. And you would agree, would you not, that  
14 Attachments B and J to Mr. Badal's October 5th  
15 affidavit and Exhibit JWB-2 to Mr. Badal's November  
16 16th Direct Testimony show that Cricket is advertising  
17 their broadband PCS service as a replacement for  
18 wire-line service; correct?

19 A. I'd like to say that, yes, that's evidence  
20 that they are marketing their service as a replacement  
21 for wire-line. But I would like to say that that is  
22 not the primary consideration that the FCC gave to the  
23 evidence for broadband PCS in the BellSouth Louisiana  
24 case.

25 Q. That wasn't my question, so if you could

1 please just listen to my questions. I want to -- I  
2 didn't interrupt you because I kind of don't want to  
3 do that, but if you could, listen to the questions.

4 A. Sure.

5 Q. Mr. Ripperger, would you agree that Qwest has  
6 presented affidavits from actual customers in New  
7 Mexico who have subscribed to Cricket's PCS service  
8 and canceled their Qwest wire-line service?

9 A. They have supplied affidavits from customers  
10 who have taken on service from Qwest.

11 Q. Those are the three affidavits attached as  
12 JWB-3 to Mr. Badal's Direct Testimony; correct?

13 A. Yes.

14 Q. So you would agree, at least, that those  
15 would be three examples of customers who have replaced  
16 their wire-line service with Cricket PCS?

17 A. Well, I can say with one of them that instead  
18 of replacement, it would be -- I would say that this  
19 would be as an alternative to an additional land line.  
20 That's not a replacement of a current land-line.

21 Q. Right. I think you have already testified in  
22 a hypothetical situation if you decided not to get a  
23 Qwest second land-line but decided to get Cricket PCS  
24 service, that would be a replacement of a land-line  
25 service with Cricket PCS.

1           So I think what you have said is you  
2 accurately read the affidavit of Ms. Walden, which I  
3 believe is the first one where she says that she  
4 purchased the Cricket service as an alternative or  
5 instead of getting an additional land-line for her  
6 children and herself; right?

7           A.     That's what the affidavit says.

8           Q.     So your testimony, I think, you mentioned  
9 some qualification about these three affidavits.

10                   Is there anything in these three  
11 affidavits that you can point to that would qualify or  
12 in some way challenge the fact that these are evidence  
13 of these customers for going and getting a first or  
14 second line from Qwest and instead replacing that need  
15 that they had with the Cricket PCS?

16           A.     Well, what I'd like to say is for some reason  
17 my version has two affidavits instead of three. So if  
18 I could get a copy -- what am I doing? Here we go.  
19 No, that was what I was looking at.

20           Q.     If you can tell me --

21           A.     I've got one for Lisa Campbell and one for  
22 Nancy Walden.

23                   MR. MUNN:   Your Honor, if I could  
24 approach. These affidavits are short and it won't  
25 take long.



1 HEARING EXAMINER: Sure.

2 MR. MUNN: (Counsel hands document to  
3 witness.)

4 (Whereupon, a brief discussion was  
5 held off the record.)

6 MR. MUNN: Your Honor, since that's my  
7 only copy, is it all right if I stand there?

8 HEARING EXAMINER: Sure, as long as Pat  
9 can see you and hear you.

10 BY MR. MUNN:

11 Q. Mr. Ripperger, have you had a chance to read  
12 the affidavit of Stephanie Gallegos?

13 A. Yes, I have.

14 Q. Is there anything in that affidavit that  
15 would qualify in any respect the fact that  
16 Ms. Gallegos is using her Cricket PCS phone and  
17 actually not obtaining a wire-line phone at all?

18 A. She says she formerly had a land-line service  
19 and terminated it six months ago. She says, I also  
20 subscribe to Cricket service for my teenage daughter  
21 who lives with me. It says later that she terminated  
22 her land-line service.

23 I don't know if that really points to the  
24 fact that she is has actually substituted or she just  
25 got sick of her land-line service and just decided to

1 carry a phone.

2 Q. Are you clear from reading this affidavit  
3 that she has terminated her land-line service?

4 A. Yes.

5 Q. Are you clear that she is now using a Cricket  
6 phone, at least since the date of this affidavit which  
7 is November 15th?

8 A. It says:

9 I formerly had land-line service at my  
10 residence but terminated that service  
11 approximately six months ago. I also  
12 subscribe to Cricket's service for my  
13 teenaged daughter who lives with me.

14 Q. If you would, then, read with respect to the  
15 affiant just talking about her daughter. But in  
16 Paragraph 2 doesn't she say she subscribed to wireless  
17 telephone service through Cricket Communications and  
18 she subscribed with them for approximately seven  
19 months?

20 A. Right.

21 Q. Okay. Thank you. Mr. Ripperger, is it fair  
22 to say that you have no knowledge of any FCC 271 Order  
23 that says this Commission should not count customers  
24 who are high credit risks in the Track A analysis?

25 A. What the FCC does talk about is what is a

1 competing provider.

2 Q. Okay, Mr. Ripperger, could you actually  
3 answer my question before you talk about answering  
4 another question.

5 My question is: Are you aware of any FCC  
6 Order where the FCC has said that this Commission or  
7 any other Commission should not count customers who  
8 are high credit risk in the Track A analysis?

9 MS. REILLY: That question was asked and  
10 answered. Mr. Munn doesn't have to like the witness'  
11 answer.

12 MR. MUNN: Actually, the witness didn't  
13 answer the question.

14 HEARING EXAMINER: I didn't hear the  
15 answer, either.

16 THE WITNESS: I have not read anything in  
17 any FCC Order that specifically points to high risk  
18 customers. It does talk about competing providers,  
19 which is a relevant topic which relates to whether or  
20 not, you know, the BOC and the CLEC are serving the  
21 same customers.

22 BY MR. MUNN:

23 Q. You seem to be fairly familiar with the  
24 Ameritech Michigan Order; correct?

25 A. I have read it.

1 Q. Okay. Hasn't the FCC there -- and this is  
2 actually at Paragraph 77 and footnote 170, do you have  
3 that cite there?

4 A. Paragraph 77, footnote 170?

5 Q. Yes.

6 A. (Witness refers to document.) Yes.

7 Q. Doesn't the FCC say there that they have  
8 acknowledged that the House of Representatives  
9 rejected a version of Track A that would have demanded  
10 the presence of a CLEC capable of offering service  
11 that is comparable in price, in features and in scope  
12 to that offered by the BOC?

13 A. It's interesting that you should bring that  
14 up because what I'm wondering is are they talking  
15 about two products that are the same in all of those  
16 in price, features and scope? Or do they allow the  
17 comparison of products which may differ in any one of  
18 those? Are they saying that the -- in the comparison  
19 of these two products, do they have to be the same in  
20 all of those features?

21 Q. Mr. Ripperger, that's not my question. My  
22 question is: Is that what the FCC says there in  
23 footnote 170?

24 A. I mean --

25 Q. You have agreed with me that we need to apply

1 the FCC's principles in evaluating Track A, so I'm  
2 trying to nail down what the FCC's principle is.  
3 Haven't you read that here?

4 A. A literal reading of the last line?

5 MS. REILLY: I will object. Mr. Munn is  
6 not entitled to have this witness simply read from the  
7 Orders and not comment on it. He is here as a witness  
8 to testify about how these things relate to our case.

9 MR. MUNN: Your Honor, I was under the  
10 impression that the witness was here on  
11 Cross-Examination to answer my question under oath.

12 HEARING EXAMINER: I am I'm going to -- if  
13 I'm correct, Mr. Munn, the pending question is do you  
14 see footnote 170 and what they have had to say. Then  
15 your question after that was?

16 MR. MUNN: My question was: Hasn't the  
17 FCC specifically said with respect to evaluating  
18 competing providers in the marketplace.

19 HEARING EXAMINER: In this case?

20 MR. MUNN: In this case, in the Ameritech  
21 Michigan Order, at footnote 170, the FCC has laid out  
22 that the House of Representatives actually rejected a  
23 version of Track A that would have demanded the  
24 presence of a CLEC capable of offering service that is  
25 comparable in price, in features and in scope to that

1 offered by the BOC.

2 HEARING EXAMINER: Mr. Ripperger?

3 THE WITNESS: I would say that the  
4 reading of that, if it says that the House rejected  
5 something, it said specifically that, yes.

6 BY MR. MUNN:

7 Q. Mr. Ripperger, are you aware of any FCC Order  
8 that says that customers who have been disconnected by  
9 the BOC but are now receiving local service from a  
10 competing provider should somehow not be considered  
11 for a Track A analysis?

12 A. What I will say is that in the consideration  
13 in the FCC's evaluation of whether or not there is  
14 competition, they want to know whether or not the  
15 competing provider is serving the same customers as  
16 the ILEC. If a customer is disconnected and is  
17 refused service by the ILEC, they are no longer a  
18 customer of the ILEC.

19 Q. So is the answer to my question, no, you are  
20 not aware of any FCC Order that says disconnected  
21 customers are not appropriate to consider in the Track  
22 A analysis?

23 MS. REILLY: The witness has answered the  
24 question. He is not obligated to give a yes or no  
25 answer.

1 HEARING EXAMINER: So is that a comment  
2 or an objection?

3 MS. REILLY: That is an objection. I  
4 apologize.

5 HEARING EXAMINER: Overruled. You didn't  
6 specifically answer the question.

7 THE WITNESS: Okay.

8 HEARING EXAMINER: Okay. So he is asking  
9 you whether or not you are aware of any --

10 THE WITNESS: Not in that specific  
11 language, no.

12 HEARING EXAMINER: Then I heard the rest  
13 of your answer.

14 THE WITNESS: Okay.

15 HEARING EXAMINER: Go ahead, sir.

16 BY MR. MUNN:

17 Q. Mr. Ripperger, is it fair to say to say that  
18 most customers who are disconnected, say, from the BOC  
19 would, say, for the case of non-payment, a non-payment  
20 issue, that they would probably do what it took to be  
21 able to pay and sign back up for service with the BOC  
22 in a short period of time?

23 A. I would say that would depend upon what  
24 choices they have. If they can easily substitute  
25 something, then maybe they would take that choice. If

1 they don't have any good choices, then I would think  
2 they would want to stay with the BOC and do what they  
3 could to stay with the BOC.

4 Q. So whether they would immediately be signing  
5 up for services of the BOC or some other competing  
6 provider usually, in your general experience in the  
7 telecom industry, if somebody is disconnected in a  
8 relatively short period of time if they are  
9 financially able they will do what it takes to get  
10 phone service again; correct?

11 A. At the point that the BOC decides that that  
12 customer again qualifies for service, then at that  
13 point they would become a customer of the BOC. If the  
14 customer should come back and not financially qualify,  
15 they are not a customer.

16 Q. Mr. Ripperger, I'd like for you to turn to  
17 Page 52 of your testimony?

18 A. (Witness complies.)

19 Q. Starting -- I guess it technically starts on  
20 Line 19 on my copy. It says:

21 In my analysis I assume 30 percent of  
22 Qwest's customers who purchase Qwest DSL  
23 service have a second line.

24 Do you see that?

25 A. Yes.



1 MS. REILLY: I don't see it.

2 MR. WITT: It's not in my copy.

3 MR. MITTLE: Mine is confidential.

4 MS. REILLY: Can you tell us what the  
5 question is again?

6 MR. MUNN: The question is: Has any  
7 other evidence surfaced? And this is -- that's a  
8 good point. This is on a confidential version. I  
9 don't think this part, which is just Mr. Ripperger's  
10 assumption, is confidential, but it is in the  
11 confidential parens.

12 THE WITNESS: Yes, I don't believe it --  
13 it should be in the confidential version or in the  
14 highly confidential version but not in the public.

15 BY MR. MUNN:

16 Q. I have the confidential version.

17 A. Sure.

18 Q. First of all, that sentence I was beginning  
19 to read, is that just an assumption that you have  
20 made?

21 A. Yes, it's an assumption.

22 MR. MUNN: So, Your Honor, I assume you  
23 were trying to protect Qwest information there.

24 HEARING EXAMINER: Absolutely. But my  
25 Page 51, that's not redacted out.

1 MS. REILLY: It's Page 52.

2 MR. MUNN: It should be Page 52.

3 HEARING EXAMINER: Oh. I thought you  
4 were talking about the last line at 51 that says on  
5 Page 2, Attachment F.

6 MR. MUNN: No, Your Honor. I'm sorry if  
7 I was unclear. It's on Page 52, Line 19 is where it  
8 starts. It is in the sort of regular confidential  
9 section. In my analysis I assumed 30 percent.

10 HEARING EXAMINER: Yes.

11 BY MR. MUNN:

12 Q. And that's an assumption that 30 percent of  
13 Qwest's customers who purchased Qwest DSL service have  
14 a second line.

15 Just so we can tie this up, Mr. Ripperger  
16 --

17 HEARING EXAMINER: Wait, wait, wait.  
18 Now, since that is in the confidential version we need  
19 to go back and seal that part.

20 MR. MUNN: Okay. I believe that this is  
21 not -- maybe some of the things around it would be  
22 confidential. Mr. Ripperger, if you think it's  
23 confidential, let's go on the confidential record but  
24 I don't think the assumption is --

25 THE WITNESS: I believe what would be

1 confidential is the exhibit. It's a discovery  
2 response from which I took the numbers. Also what  
3 would be confidential are the results of the  
4 calculations in the exhibit that I provide.

5 HEARING EXAMINER: You don't think that  
6 the percentage that you just gave is confidential?

7 THE WITNESS: That percentage, the  
8 rationale that I came up with for that came from a  
9 newspaper article in the affidavit of John Badal. So  
10 my assumptions come from that.

11 If you disinclude the numbers from the  
12 exhibit from which I made the calculation and the  
13 final numbers, it's fine.

14 HEARING EXAMINER: All right. So is  
15 Qwest satisfied that right now we haven't gotten into  
16 the area that's considered to be confidential?

17 MR. MUNN: Yes, Your Honor.

18 HEARING EXAMINER: Do you plan on going  
19 there?

20 MR. MUNN: No, I don't. I'm just talking  
21 about the assumption he made.

22 BY MR. MUNN:

23 Q. Mr. Ripperger, you have kind of come up with  
24 this 30 percent figure on your own. It's an  
25 assumption not based on a particular piece of

1 confidential evidence; correct?

2 A. That's correct.

3 Q. And that ends my inquiry there. From Qwest's  
4 position I don't think we need to seal anything.

5 HEARING EXAMINER: All right.

6 BY MR. MUNN:

7 Q. I'm going to try this without my Order. If I  
8 have to go get it, I will. Mr. Ripperger, isn't it  
9 fair to say that in the FCC's Sixth Wireless Report  
10 that they identified Cricket as an example of wireless  
11 service that would be a replacement for wire-line  
12 service?

13 MS. REILLY: Can the witness have a cite?

14 MR. MUNN: Sure.

15 MS. REILLY: It's a big Order.

16 MR. MUNN: You are right. It is. This  
17 would be --

18 BY MR. MUNN:

19 Q. Mr. Ripperger, do you have that Order with  
20 you, the Sixth Wireless Report?

21 A. I don't have the report. What I have is John  
22 Badal's Direct Testimony.

23 MR. MUNN: Okay. I'll go get you a copy.

24 MS. REILLY: That actually raises a good  
25 point. That actually is beyond the scope of this

1 witness' testimony. He didn't testify about the Sixth  
2 report.

3 HEARING EXAMINER: No, but he testified  
4 about Cricket. So I'm going to allow the question.  
5 BY MR. MUNN:

6 Q. Mr. Ripperger, if you could, turn to Page 33  
7 of the FCC's July 17th, 2001, Sixth Wireless Report.

8 A. (Witness complies.)

9 Q. If you could, the paragraph that I just  
10 pointed out to you, would you read the first two  
11 sentences of that paragraph?

12 A. A few wireless carriers have begun offering  
13 service plans designed to compete directly  
14 with wire-line local telephone service.  
15 For example, Leap, through its Cricket  
16 subsidiary, now offers its comfortable  
17 wireless mobile telephone service in 12  
18 markets, predominantly in the south and  
19 southwest.

20 Q. Mr. Ripperger, later on at the very bottom of  
21 the page that you are on and the top of the next page,  
22 34, doesn't the FCC acknowledge that Leap, the parent  
23 company of Cricket, that that company states that  
24 about half of their customers view their phones as  
25 replacements for first or second lines?

1 A. Starting at 'according to Leap'?

2 Q. Yes, sir.

3 A. (Witness refers to document.) They quote  
4 Leap on that, yes.

5 Mr. Munn, are we done with this one?

6 Q. I think we are done for good, with that  
7 Order.

8 A. Okay.

9 Q. Just so you know, I don't think we are going  
10 to have a whole lot longer here.

11 A. That's okay.

12 Q. Mr. Ripperger, would you agree, sir, that  
13 portability would be an advantage that PCS service has  
14 over wire-line service?

15 A. For some folks, possibly.

16 Q. So for these people who like the fact that  
17 they can move around with, say, a Cricket PCS phone,  
18 that would make Cricket more attractive than a  
19 traditional wire-line phone to those people; correct?

20 A. Different features for different  
21 telecommunications products would seem more attractive  
22 to certain people.

23 Q. Mr. Ripperger, I'd like for you to turn to  
24 Mr. Badal's testimony, Exhibit JWB-2, which is a  
25 Cricket mailer.

1           A.     (Witness complies.)

2                     Okay.

3           Q.     Sir, before we talk about that, isn't it fair  
4     to say that on Page 47 of your testimony that you've  
5     indicated that Cricket services may appeal to those  
6     who no longer qualify for Qwest's land-line service?  
7     Do you remember saying that in your testimony?

8           A.     Yes.

9           Q.     By that, do you mean that Cricket would only  
10    apply to people who couldn't qualify for Qwest or do  
11    you mean that would just be a sub-set of the people  
12    who might be interested in Cricket?

13          A.     What I would be saying there is that for  
14    those people who have been disconnected, if they  
15    wanted a telecommunications service and can no longer  
16    go back to the BOC, in going out of the market then  
17    Cricket might seem attractive to them. You know, if  
18    they just wanted some form of telecommunications  
19    service.

20          Q.     So that would be one group of customers that  
21    may be interested in Cricket; correct?

22          A.     Possibly, yes.

23          Q.     My question is: Is it your testimony, in  
24    your written testimony or here today, that that's all  
25    the body of customers that would be interested in

1 Cricket or just one sub-set of the body of customers  
2 that would be interested in a Cricket service?

3 A. I think if you talk about the body of  
4 customers who may be interested in Cricket, it's hard  
5 to say who those people are and exactly why they would  
6 be buying Cricket. You would probably have to ask  
7 them.

8 Q. Fair enough. If you could, turn to Exhibit  
9 JWB-2.

10 A. (Witness complies.)

11 Q. Based on your experience in the  
12 telecommunications industry and just based on your  
13 having lived however many years you've lived, would  
14 you look at this chart on the bottom of JWB-2?

15 A. Yes.

16 Q. When you see the first comparison there  
17 between another home phone to a second wire-line or  
18 Cricket wireless, there you've got the expensive  
19 installation charge of up to \$75.00. With Cricket, no  
20 installation charges.

21 Would you agree that that would at least  
22 be a positive thing for a Cricket customer to see?

23 A. That's one factor of many.

24 Q. Sure. I'm not asking if that solves  
25 everything for them.



1 A. Sure.

2 Q. But that's one piece of positive good news  
3 for them.

4 Is that correct?

5 A. Uh-huh.

6 Q. When you say uh-huh, is that yes for the  
7 Court Reporter?

8 A. Well, given the choice of an up-front charge  
9 of \$75.00 and no charge up front, then I would say  
10 that would be a positive.

11 Q. Great. If you can just read, then, the  
12 bottom one of these, I'm not going to read through  
13 each of these, but if you can look at them in summary,  
14 does this make sense to you that at least the  
15 comparison here between getting a land-line versus a  
16 Cricket wireless phone, that each of these things in  
17 the Cricket column would be one piece of evidence that  
18 would make Cricket attractive to someone who was in  
19 the marketplace?

20 A. I would say it's an incomplete piece of  
21 evidence. I would say that along with these positives  
22 you need to mark down the negatives.

23 Q. All I'm asking is that if these things listed  
24 on their mailers are positives, if you would agree  
25 with that?

1           A.    No.  I would say some of them might be  
2   inaccurate.  We've got high monthly bill here and  
3   you've got one low price, 29.95, for all local calls.  
4   You can get a land-line phone, make local calls and  
5   pay a basic rate for less than that.

6           Q.    And when you say you, you understand this is  
7   a Cricket direct mailer; correct?

8           A.    I don't understand what -- your  
9   characterization of that.  Sorry.

10          Q.    It seemed to me from your response that you  
11   thought somehow Qwest, or me personally, we had  
12   written this document.

13          A.    No, I understand that you haven't, no.

14          Q.    For example, even understand that a land-line  
15   phone is hard-wired to the house.  With Cricket  
16   wireless phone you can take it with you all around  
17   town.

18                    Would you think that would be attractive?

19          A.    Well, portability could be a plus.  Another  
20   interesting thing here says unpredictable charges.  
21   When you look to the right it says you pay the same  
22   low price every month.  Well, I mean, I don't know.  
23   Is it possible that on your -- that you get your home  
24   phone line that a lot of the charges are not  
25   unpredictable.  You know, I mean, there's a listing of

1 positives and negatives. I waffle on a few and I  
2 might say there's a few positives on here but it  
3 doesn't list the negatives.

4 Q. Sir, would you agree that the FCC has even  
5 acknowledged that customers may be willing to pay a  
6 premium for the mobility benefits of any type of a  
7 wireless service?

8 A. They may be.

9 Q. Sure. Some people would say if you don't go  
10 anywhere, they probably wouldn't look to mobility;  
11 correct?

12 A. Maybe. I think you would need to -- if you  
13 want to know the facts, you need to do a study, I  
14 think.

15 Q. So people with agoraphobia who don't get out  
16 much, probably wouldn't view that as a plus?

17 A. We could poll them and find out, I guess.

18 Q. Mr. Ripperger, would you agree with me that  
19 nothing in the Telecommunications Act of '96 and  
20 nothing in the FCC's Orders requires a CLEC to serve  
21 exactly the same customers by the BOC for that CLEC to  
22 be considered -- or competing provider -- to be  
23 considered under Track A?

24 A. I would say that in the FCC's discussion of a  
25 competing provider there's an implication that there

1 would be competition for the BOC's customers.

2 Q. And?

3 A. And you want me to say if there's anything  
4 specific that I know of?

5 Q. Correct, and is there anything that's  
6 mentioned in the Telecommunications Act of 1996 or the  
7 FCC's Order evaluating that Act that requires a CLEC  
8 to serve exactly the same customers as those served by  
9 the BOC to be considered for Track A?

10 A. Not in those words.

11 Q. Mr. Ripperger, you are an economist here at  
12 the New Mexico Staff; correct?

13 A. That's correct.

14 Q. Are you familiar with what the -- I don't  
15 think I need to ask you that question. It was going  
16 to be really good too. I feel bad. Kind of leave you  
17 hanging there.

18 A. Oh, well.

19 Q. Mr. Ripperger, are you aware of shared tenant  
20 services being provided in Santa Fe or Albuquerque?

21 A. I don't know of any specific example. Are  
22 you talking about an actual customer of shared tenant  
23 services in Albuquerque or Santa Fe?

24 Q. Well, actually, not that kind of boxed in.  
25 Are you aware of shared tenant services being provided

1 anywhere in Santa Fe or Albuquerque?

2 MS. REILLY: This is not exactly an  
3 objection, but can we tie this to Mr. Ripperger's  
4 testimony somehow?

5 MR. MUNN: Actually, we can.

6 MS. REILLY: Okay. I'd appreciate that.

7 BY MR. MUNN:

8 Q. Sure. Mr. Ripperger, on Page 32 of your  
9 testimony, Lines 12 through 19, you discuss an  
10 apartment building or apartment complex being served  
11 by a CLEC-owned PBX system.

12 Do you see that?

13 A. Yes.

14 Q. Wouldn't that be an example of shared tenant  
15 services?

16 A. I don't know if technically the term shared  
17 tenant services -- the service of a multiple dwelling  
18 unit or PBX. If that's the same thing, then we could  
19 equivocate those two.

20 Q. So you are aware of apartment complexes where  
21 people live being served by a CLEC through a PBX  
22 system in either Santa Fe or Albuquerque; correct?

23 A. I don't know of any specifically that are  
24 served that way in Santa Fe or Albuquerque. I brought  
25 up the example to say that it's possible that that

1       could be the situation.

2           Q.     Okay. Based on what you've discussed here in  
3       your testimony at Lines 12 through 19, you believe  
4       that the people that live in this apartment complex  
5       should appropriately be classified under a business  
6       class of service when they get their phone service;  
7       correct?

8           A.     The customer would be -- the owner of the  
9       apartment complex who would be billed by the ILEC or  
10      CLEC for the PBX and the access lines that run to the  
11      PBX.

12          Q.     Was the answer to my question yes, they  
13      should be categorized as business, that service should  
14      be categorized as business service?

15          A.     Oh, yes, categorized as a business service.

16          Q.     So if a CLEC in Santa Fe or Albuquerque  
17      viewed this the way you do in answering the  
18      Commission's survey, then, if they were providing  
19      service to people's residences in an apartment  
20      complex, they could, if their mindset was, hey, I'm  
21      providing business services to these peoples' homes or  
22      their line to their homes, they would then answer that  
23      question that that was a business service -- there  
24      wasn't residential service when they were -- let me  
25      rephrase that question. I'm sorry.

1           Is it fair to say that if a CLEC answering  
2   -- and this is a hypothetical.

3       A.    Yes.

4       Q.    A CLEC answering the Commission's survey  
5   about residential access lines, if they viewed this  
6   same situation the way you do, which is that would be  
7   classified as business services, they wouldn't answer  
8   these customers in their residences as residential  
9   service; correct?

10      A.    I would think that they would answer that  
11   they would be supplied the campus trunks for emergency  
12   purposes and the access lines going to the PBX. Those  
13   access lines going to the PBX would be classified --  
14   they would classify as business lines.

15      Q.    And the CLEC who was serving those customers  
16   at this apartment complex, if they viewed this the way  
17   you would, would check the business box instead of the  
18   residence box on the Commission's survey; correct?

19      A.    Well, I don't know the manner in which a CLEC  
20   would answer the survey per se. But if they were -- I  
21   would, in my view, if they were viewing it the way I  
22   view it, then they would be business customers of the  
23   ILEC, in my example, 100 access lines.

24      Q.    Is it fair to say that in apartment complexes  
25   served with a PBX system, but for that PBX system

1 being there, these customers would then likely obtain  
2 residential service from Qwest or some other competing  
3 provider?

4 A. What I'm wondering is if the CLEC bills an  
5 apartment complex owner and then is in turn billed by  
6 Qwest, that Qwest wouldn't bill the apartment complex  
7 owner as a business for those access lines.

8 Q. Okay. I'm sorry. That's not my question.  
9 My question is but for the PBX system being there and  
10 the apartment providing the phone service through the  
11 PBX -- let's remove that. Again, this is a  
12 hypothetical.

13 A. Yes.

14 Q. Then wouldn't the most likely result be that  
15 these customers are going to obtain residential  
16 service for their residence from Qwest or some other  
17 company?

18 A. My example does involve the PBX. If you  
19 removed the PBX and if they had lines running directly  
20 to Qwest's central office, then I guess Qwest would  
21 consider them to be residential customers.

22 Q. Or any other provider that's giving them  
23 residential service; correct?

24 A. What.

25 Q. If the PBX system is removed they don't have



1 to just go to Qwest? Whether it's Qwest or some other  
2 provider of residential service?

3 A. Yes. If they are going to a CLEC switch or  
4 if the CLEC has those lines, then they would be the  
5 CLEC's customers.

6 HEARING EXAMINER: Mr. Munn, I'm a bit  
7 troubled. Is the purpose of that line of inquiry to  
8 show that those would be potential customers or are we  
9 somehow getting into another potential area of other  
10 types of competition that relates to my question to  
11 Mr. Teitzel earlier today?

12 MR. MUNN: I think what I am using it,  
13 not thinking of all the possibilities of it, is that  
14 in answering the Commission's survey, I think accurate  
15 responses to the information survey are helpful.

16 This is not -- I'm not contributing any  
17 type of ill motive to any party answering because, as  
18 Mr. Ripperger said, and I don't attribute an ill  
19 motive to him, it's just a different view of what  
20 residential service would be serving residents with  
21 phone service, that he would view that as business.

22 So I think it's logical that if a CLEC  
23 shared his view, because I'm not trying to marginalize  
24 his view as being somehow a fringe view, if they  
25 shared that same view, they would report phone service

1 to residence customers as business.

2 So that there's the possibility -- I think  
3 Mr. Ripperger alludes in his testimony here about  
4 apartment complexes being served by PBX's, that in  
5 that event it's very possible that we have had some of  
6 these data request responses mislabeled.

7 HEARING EXAMINER: My understanding when  
8 I asked the question this morning of what is Qwest's  
9 position on what types of things you think the  
10 Commission should look at, it was resale and it was  
11 the PCS service slashed with Cricket.

12 I specifically asked him about CLECs and  
13 he indicated to me -- I believe his testimony was, I  
14 think there might be some competition, but that's not  
15 what I'm here to testify to.

16 MR. MUNN: That's right.

17 HEARING EXAMINER: I mean, now are you  
18 trying to say that there is some other -- that Qwest  
19 believes, through these questions, that there is some  
20 other type of competition that the Commission needs to  
21 look at, i.e., these PBX items?

22 MR. MUNN: Your Honor, Mr. Teitzel, I  
23 think, accurately answered in his capacity as a  
24 witness presenting testimony in this docket, which is  
25 really all he can speak to, he is not presenting

1 evidence about CLECs.

2 My point is that Mr. Ripperger, the Staff  
3 witness, has actually presented an inquiry here. I  
4 have never represented that I have some stack of  
5 documents or some evidence of this. I'm exploring a  
6 situation that he had raised in his testimony that  
7 could be occurring, assuming he has that there  
8 probably are apartments that are shared by PBX's.

9 I don't have any evidence to present to  
10 you and neither do my witnesses, to show that that's  
11 actually occurring as I sit here today.

12 By the way, I'm through with that line of  
13 questioning and I'm almost through with all of my  
14 questions.

15 HEARING EXAMINER: Yes. I just have a  
16 concern. I want to make sure that -- I realize that  
17 it's the end of the day and people are tired. But I  
18 want to make very sure that our record is as full and  
19 complete as the parties can make it, given the time  
20 frame of the case, et cetera.

21 And if the parties are going to bring in  
22 things, for lack of a better term, some aside type of  
23 issues in conjunction with the two major parts of  
24 Qwest's evidence, that I'm going to hear about it now.  
25 I don't want to hear about, well, we tried to present

1 evidence on that and we didn't get the opportunity to  
2 or, oh, we think the Commission should look at this  
3 when we haven't had any of the witnesses deal with it.  
4 That's why I specifically asked Mr. Teitzel that  
5 question this morning.

6 So like I say, I understand that people  
7 are in a hurry. But if there's going to be some other  
8 type of competition that the Commission needs to look  
9 at, I want to know today.

10 MR. MUNN: Fair enough. Your Honor, for  
11 Qwest's part, I have no other evidence to present to  
12 you. I wanted to inquire of Mr. Ripperger of his own  
13 testimony. But you can rest assured Qwest doesn't  
14 have evidence here, so we are not going to be  
15 complaining that we didn't have the opportunity to  
16 present to you or this Commission evidence on PBX  
17 apartment complexes in this hearing.

18 HEARING EXAMINER: All right.

19 MR. MUNN: If that is developed at some  
20 point in the future -- maybe it's too late. I'm not  
21 complaining that you have precluded us from doing it.

22 HEARING EXAMINER: All right, sir.

23 MR. MUNN: Your Honor, just for ease of  
24 reference, this is a document already in the record.  
25 It's a multi-state exhibit. But I think since we will

1 be citing to it it may be helpful for you and for the  
2 Commission to actually have something that's not in a  
3 big stack. This is Exhibit DLT-3 in the multi-state.  
4 It's just a U. S. census table of populations. I can  
5 cite to it whether I introduce it here or not because  
6 it's in the record.

7 Would it be appropriate to have this  
8 marked as Qwest's next exhibit here? I've noticed we  
9 had some discussion this morning about transcripts  
10 which I've always understood were in the record. I  
11 thought this one piece of paper maybe helpful to you.

12 HEARING EXAMINER: It's the census from?

13 MR. MUNN: It's the census 2000 ranking  
14 of the states ranked by population. I can show it to  
15 you so you can decide if you want me to attach it.

16 HEARING EXAMINER: Any objection to  
17 what's been identified, now, I think, as Qwest Exhibit  
18 5?

19 MS. REILLY: Ms. Hurst, it's hard for us  
20 to say until we know what the foundation Mr. Munn  
21 plans to lay to use this exhibit with this witness and  
22 how he plans to use it. Maybe we can see.

23 HEARING EXAMINER: Is there any dispute  
24 that it is what it is? That it's from the  
25 multi-state?

1 MS. REILLY: Well, I don't think this  
2 witness can --

3 MR. WITT: My question is was this  
4 provided as part of Mr. Teitzel's testimony? It  
5 appears that DLT-3 would be David L. Teitzel 3. I  
6 want to make sure that that's correct.

7 MS. REILLY: Suffice to say I don't mind  
8 if this witness refers to it for the questions. But  
9 I'm not sure yet that it needs to be introduced into  
10 our record through this witness. But I don't mind if  
11 we talk about it with this witness.

12 HEARING EXAMINER: Mr. Munn, is this from  
13 Mr. Teitzel's testimony before the multi-state?

14 MR. MUNN: In the multi-state. Well, I  
15 can't remember if this was attached to Mr. Teitzel's  
16 testimony. I believe it wasn't. It was introduced  
17 and admitted in the multi-state process, which is  
18 already in the record here. I mean, we are certainly  
19 going to be citing to this. It's in the New Mexico  
20 record because it's in the multi-state. All I'm  
21 trying to do and if it's more hassle than it's worth  
22 I'll withdraw it, because I'm going to cite to it.  
23 But it keeps you and everybody else from having to dig  
24 through the multi-state files which are already in the  
25 record.

1 HEARING EXAMINER: Well, it's going to be  
2 identified as Qwest Exhibit 5. We will just wait and  
3 see if we want to admit it into the record.

4 (Whereupon, a document was marked  
5 QWEST EXHIBIT 5 for identification.)

6 BY MR. MUNN:

7 Q. Mr. Ripperger, you have before you what's  
8 been marked for identification as Qwest Exhibit 5,  
9 which is a census ranking of states by population;  
10 correct?

11 A. Yes.

12 Q. And in the exhibit what is the population  
13 shown for the State of New Mexico for April 1, 2000?

14 A. 1,819,046.

15 Q. Mr. Ripperger, what is the population -- what  
16 I'm doing here I want to compare the population as it  
17 would be attractive to CLECs for this date vis-a-vis a  
18 couple other states that the FCC has granted  
19 authority.

20 So what is the population listed for the  
21 State of Texas, sir?

22 A. 20,851,820.

23 Q. What is the population listed for the State  
24 of New York?

25 A. 18,976,457.

1 Q. Okay.

2 MR. MUNN: Your Honor, again we only  
3 offer this -- that would actually be a reoffer into  
4 evidence. It's already admitted into the record. If  
5 you want to mark it for identification purposes, I  
6 will be citing then to this number and the multi-state  
7 number because the multi-state number actually is an  
8 exhibit in the record.

9 I think in retrospect this is taking up  
10 time that neither I nor anyone else wants to take with  
11 this. This is a multi-state exhibit. Nobody contests  
12 that. I thought it would be more convenient for  
13 everyone to have a number here so people wouldn't have  
14 to dig.

15 HEARING EXAMINER: I don't know whether  
16 or not I've gotten an agreement that it's a  
17 multi-state agreement.

18 MR. MITTLE: I'm willing to go on  
19 Mr. Munn's representation. I have no objection.

20 MS. REILLY: I know this is odd. Can I  
21 ask Mr. Ripperger if you remember this as an exhibit  
22 from the Track A multi-state hearing?

23 THE WITNESS: No, I don't remember it.

24 MS. REILLY: Neither do I.

25 THE WITNESS: In fact, in rummaging



1 through Mr. Teitzel's exhibits I don't remember seeing  
2 it. It's possible I could have overlooked it, but I  
3 doubt it.

4 MR. MUNN: Your Honor, I can represent as  
5 an Officer of the Court, this is Exhibit DLT-3 from  
6 the multi-state transcripts. Again, if it's  
7 problematic for the Court to admit it I will withdraw  
8 it, keeping in mind I'm not withdrawing it as an  
9 exhibit because it's already an exhibit in the  
10 multi-state and I'll cite to it. I was trying to save  
11 time. Believe it or not, I was trying to help  
12 everyone here. It sounds self-serving but it was true  
13 in this case.

14 HEARING EXAMINER: And I appreciate that.  
15 I haven't heard a specific objection. Staff doesn't  
16 remember it but --

17 MS. REILLY: Well, I guess in terms of  
18 admitting it here if this witness cannot authenticate  
19 it, doesn't know where it came from, he doesn't recall  
20 it from the multi-state, in terms of admitting it, I  
21 guess we object.

22 In terms of referring to it, if Mr. Munn  
23 can provide us with a multi-state cite and authority  
24 in the record, well, there it is.

25 HEARING EXAMINER: I appreciate,

1 Mr. Munn, your attempt to provide the Commission with  
2 documents without having to reference them. Actually,  
3 sort of based on your representation, like I say, as  
4 an Officer of the Court that this, in fact, was a  
5 document that was presented, I'll admit it for  
6 convenience.

7 (Whereupon, QWEST EXHIBIT 5 was  
8 admitted into evidence, a copy of  
9 which may be found under separate cover.)

10 MR. WITT: I don't mean to confuse things  
11 but Mr. Teitzel is sitting right here. If he says  
12 it's his exhibit, I'll believe him.

13 MR. MUNN: It was an exhibit introduced  
14 by Qwest. I don't know if it was his exhibit.

15 MR. WITT: It was labeled DLT.

16 MR. MUNN: I think in the multi-state all  
17 of our exhibits have to have a witness three-letter  
18 attachment. I couldn't really testify there.  
19 Although I talked a lot/ but they didn't let me  
20 actually put my initials there, so I had to put  
21 someone's.

22 MR. TEITZEL: Your Honor, I can confirm  
23 that that was entered in the multi-state workshop.

24 HEARING EXAMINER: Thank you, Mr. Teitzel  
25 and Mr. Munn. Anything further?

1 MR. MUNN: Nothing further. I appreciate  
2 it. Thank you, Mr. Ripperger.

3 THE WITNESS: You are very welcome.

4 HEARING EXAMINER: Let's go off the  
5 record here a second.

6 (Whereupon, a brief discussion was  
7 held off the record.)

8 HEARING EXAMINER: All right. We are  
9 going to take a five-minute recess.

10 (Whereupon, a brief recess was  
11 taken.)

12  
13 EXAMINATION

14  
15 HEARING EXAMINER: Back on the record.  
16 Mr. Witt, you have questions?

17 MR. WITT: Yes, I do. Thank you, Your  
18 Honor.

19  
20 CROSS-EXAMINATION

21  
22 BY MR. WITT:

23 Q. Good afternoon, Mr. Ripperger.

24 A. Good afternoon.

25 Q. How are you today?

1           A.     Good, good.

2           Q.     I do have some follow-up questions that I'd  
3     like to ask you.  First of all, if I can begin on Page  
4     15 of your testimony, Line 8, just so that I can  
5     clarify, the sentence there reads:

6                     Mr. Teitzel also seems to be backing away  
7                     from Qwest's previous claim that  
8                     resale-based CLECs serve 3,064 residential  
9                     access lines via resale in New Mexico.

10                    Just to clarify, you are not saying that  
11     Mr. Teitzel was wrong at the time he said that CLECs  
12     served 3,064 residential access lines?

13           A.     No.

14           Q.     But you are saying that it appears that the  
15     number of access lines that are being resold is  
16     diminishing.

17                    Is that correct?

18           A.     Yes.  I mean, it's evident that number is  
19     reduced over time.

20           Q.     That number is reduced over time?

21           A.     Right.

22           Q.     I think Mr. Munn characterized that as being  
23     dynamic.  I guess I would ask you if you would  
24     characterize it the same way?

25           A.     Dynamic implies that maybe it could go one

1 way or the other. I think it's evident that what we  
2 are seeing in particular to Qwest's data response -- I  
3 think it's to my -- let's see here. To -- well,  
4 anyway, Exhibit MSRA and I'm not going to quote any  
5 numbers. Well, it's not listed as confidential and I  
6 guess it's not. But anyway, I won't mention numbers.  
7 But they are being reduced over time steadily. It's a  
8 trend.

9 Q. Thank you. Now, in an open market where you  
10 are dealing with a monopoly whose market share is  
11 being eroded, would you expect that kind of a trend?

12 A. I mean, you would expect the levels of known  
13 levels of competitive access to be increasing.

14 Q. So you would expect the CLECs' market share  
15 to be growing?

16 A. I would expect that, yes.

17 Q. Thank you. Mr. Munn also had you read two  
18 passages from the Sixth Report. I don't recall that  
19 he had any questions for you on those. He simply  
20 asked you to read from them.

21 I'm going to follow up by asking, do you  
22 have any comments on either of the passages that he  
23 asked you to read?

24 A. Well, I mean, it's evident that the FCC is  
25 quoting Leap Wireless. What is not evident is any

1 kind of comment by the FCC in there as to how valid  
2 those would be to a 271 Application. It's simply  
3 their quoting of the status of competition nationwide  
4 and using Leap's representations.

5 Q. Thank you. Now, there was a group of  
6 hypotheticals that Mr. Munn presented to you, one  
7 after the other.

8 Do you recall that?

9 A. Yes.

10 Q. And I believe that they related to the  
11 substitution or replacement of service as between  
12 Cricket, for example, and Qwest?

13 A. Right.

14 Q. Am I correct there?

15 A. Uh-huh.

16 Q. Do you see any evidence on the record that  
17 would support any of those hypotheticals being true in  
18 any significant manner within the State of New Mexico?

19 MR. MUNN: Your Honor, I'm going to  
20 object at this point. Maybe this is my first time to  
21 New Mexico, but I'm going to object to, I don't know  
22 whether you would characterize it as friendly Cross or  
23 some type of additional Direct Testimony.

24 A party who is clearly in line with the  
25 Staff testimony, I mean Ms. Roth's testimony and

1 Mr. Ripperger's testimony vary in the length of the  
2 testimony but certainly not in the viewpoints  
3 expressed. This is simply a way to allow additional  
4 Direct Testimony into the record by a party who has  
5 certainly in this case, and I'm not saying that they  
6 are always aligned with the Staff, but certainly in  
7 this case their positions are identical and their  
8 testimony has exactly the same point. So I object.  
9 This is additional Direct.

10 MR. WITT: If I may respond. I believe  
11 that Mr. Munn in his Cross-Examination did not leave a  
12 very clean record and I would like to try to clean up  
13 that record.

14 MR. MUNN: Your Honor, I think the  
15 purpose intimated there is that I would like to add  
16 some additional Direct things that would be friendly  
17 to Mr. Ripperger to help supplement his Direct  
18 Testimony in light of the Cross.

19 There was certainly no instance where  
20 Mr. Ripperger was unable to answer my questions and  
21 develop the record he chose to develop.

22 MR. WITT: On the contrary, Your Honor.  
23 What I'm really looking for is to understand  
24 Mr. Ripperger's testimony.

25 HEARING EXAMINER: Well, Mr. Munn, I

1 appreciate at least the appearance in your mind of  
2 allied forces. I think that on that particular  
3 subject matter there were a couple of questions there  
4 I had regarding Mr. Ripperger's testimony.

5 So I'm going to overrule your objection at  
6 this point. If it does appear too big a pattern and  
7 practice of inappropriate questions, then I will rely  
8 on you to make the appropriate objection and I'll make  
9 the appropriate ruling.

10 MR. MUNN: Thank you, Your Honor.

11 MR. WITT: Thank you, Your Honor.

12 HEARING EXAMINER: So we have a pending  
13 question?

14 BY MR. WITT:

15 Q. If I may, let me try to rephrase it. With  
16 respect to the hypotheticals that Mr. Munn presented  
17 to you, do you have any evidence before you that any  
18 of those hypotheticals are substantially true at this  
19 time within the State of New Mexico?

20 A. No. The bar that has been set and that I  
21 used for my evaluation was set by the FCC in the  
22 BellSouth Louisiana Order. It would require analysis,  
23 studies, statistics, something showing through to a  
24 pretty high degree whether or not there was any kind  
25 of substitution going on, which was their main concern



1 in that Order. That's the criteria that I used in  
2 evaluating what they presented to us. It's not a  
3 hypothetical.

4 Q. So is it fair to say that the hypotheticals  
5 presented might be characterized as anecdotal as  
6 opposed to the product of a statistically valid study?

7 A. Yes.

8 Q. Thank you. Have you seen such a study in  
9 these proceedings?

10 A. No, no studies were provided.

11 Q. Thank you. Now, also on Page 52 of your  
12 testimony, Mr. Munn was asking you about Lines 19  
13 through 22, if I recall correctly.

14 A. Yes.

15 Q. At the very end of his questioning of you, he  
16 said words to the -- now these are my notes, so I'll  
17 stand corrected if you believe that he said something  
18 different.

19 A. Yes.

20 Q. But did you come up with that assumption all  
21 by yourself, the assumption being that the assumptions  
22 stated in Lines 20 through 22?

23 A. You are talking about Line 20 where I say  
24 assume 30 percent of Qwest's customers who purchased  
25 Qwest's DSL service have a second line?

1 Q. Correct, that's the assumption?

2 A. The information that I got that from, there  
3 was an article that I quoted. There was a quote from  
4 someone named Mr. Atkins (sic) who says that 30  
5 percent of those customers replace their second line  
6 with -- get rid of their second line when they get  
7 DSL. When Mr. Munn questioned me -- oh, no. This is  
8 30 percent where they have a second line. The quote  
9 was that 30 percent of those customers divest  
10 themselves of a second line. That's what was in the  
11 newspaper article.

12 MR. MUNN: Your Honor, I'll object at  
13 this point because I didn't ask him anything about  
14 this newspaper article and Attachment F. I asked him  
15 about the specific assumption on Lines 20 and 21 about  
16 Qwest customers who purchase DSL service have a second  
17 line. And I think the testimony is clear, this is  
18 another example, and I would object to it, of either a  
19 Redirect from AT&T -- I don't see any difference in  
20 what is occurring right now and Redirect. This is not  
21 an adversarial process where Mr. Witt is attempting to  
22 probe and attack the claims made by the witness,  
23 attack even in a polite manner. This is an attempt to  
24 try to develop Redirect. This is a continuing Direct  
25 Examination and I object to it.

1 MR. WITT: Well, Your Honor, when I took  
2 down the phrase you came up with this figure all by  
3 yourself, it struck me that that wasn't quite  
4 accurate. So I'm proceeding to see whether or not  
5 that is accurate.

6 HEARING EXAMINER: And I do recall that  
7 particular phrase, so I'm going to overrule your  
8 objection, Mr. Munn, because I think it was unclear.

9 I know that Mr. Ripperger did testify  
10 about a newspaper article preceding your question.  
11 Then he answered the question you asked. So I'm  
12 unclear as to exactly what the witness meant by that  
13 question.

14 MR. MUNN: Your Honor, I understand my  
15 objection is overruled, so I'm not trying to go there.  
16 But I think something is happening here on the record  
17 that is unfortunate. There is a confusion of the  
18 question that I asked and that Mr. Ripperger answered.  
19 I asked him about his statement, I assume, 30 percent  
20 of Qwest's customers who purchase Qwest DSL service  
21 have a second line. That's at Lines 20 and 21.

22 What Mr. Witt is now addressing -- and  
23 admittedly, these are confusing or at least what  
24 Mr. Ripperger is answering -- is a completely  
25 different assumption. Which is on Lines 21, 22 and

1 23. I didn't ask him about those.

2 So this is not, I guess, in the form of an  
3 objection. I want the record to be clear that these  
4 answers are not to the questions that I asked because  
5 I was asking about that first assumption about  
6 purchasing DSL services, those customers have a second  
7 line. The second assumption is that they have  
8 divested themselves of their second line. Mr.  
9 Ripperger did cite to an attachment in Mr. Badal's  
10 affidavit for that. I didn't ask that question.

11 MR. WITT: Your Honor, that's not my  
12 recollection, but I yield to your decision.

13 HEARING EXAMINER: Well, my notes  
14 specifically said -- I mean, if you are telling me  
15 that you asked the question about 21 and 22, I don't  
16 have a reason to -- you know, somebody thinks one  
17 recollection and somebody has a different  
18 recollection.

19 Why don't we -- I will, since I don't  
20 recall, I will withdraw my ruling on that. I'll just  
21 say since there seems to be a difference of opinion as  
22 to exactly which lines, the record is going to speak  
23 for itself as to which lines. If the witness needs to  
24 clarify his answer, he can do so through Ms. Reilly on  
25 Redirect.

1 MR. WITT: There you go.

2 HEARING EXAMINER: Go ahead, Mr. Witt.

3 BY MR. WITT:

4 Q. Thank you. One last question, Mr. Ripperger.  
5 In evaluating whether a replacement of one service for  
6 another has actually occurred, is the best evidence  
7 the marketing effort of the company selling that  
8 service or would it be a study of actual consumer  
9 decisions?

10 A. A study of actual consumer decisions. That  
11 was stated specifically in the BellSouth Louisiana  
12 Second Order. They go through a whole analysis of why  
13 they rejected the evidence presented by BOC in that  
14 instance.

15 MR. WITT: Mr. Ripperger, thank you very  
16 much. I have nothing further. Thank you, Your Honor.

17 HEARING EXAMINER: Thank you Mr. Witt.  
18 Mr. Mittle, any questions of the witness?

19 MR. MITTLE: As represented, no.

20 HEARING EXAMINER: Thank you, sir. Mr.  
21 Ripperger, thank you for appearing here today. I do  
22 have a few questions.

23 THE WITNESS: Okay.  
24  
25

EXAMINATION

BY THE HEARING EXAMINER:

Q. I also have the word dynamic circled. Now it sounds like you defined dynamic as a trend. I know that your discipline is economics.

A. Yes.

Q. So tell me how you are using or defining the word trend?

A. A trend -- dynamic would mean that -- all it means is that it's subject to change and the predictability change is not known. When you talk about trends, predictability is brought into the change. So the more dynamic it is, the less predictable it is and the less of a trend you would see.

Q. But it's your testimony, then, that in the context that the word dynamic was used and now that you use the word trend, are you saying that there is some kind of trend to the number of resold lines?

A. Yes.

Q. And what is it?

A. Downward monthly.

Q. So you are saying it's predictable that it's going to keep going down?

1           A.    Well, when you talk about predictability you  
2    can look at data over time.  And if it's established  
3    long enough that they are -- let's say there is a  
4    downward trend, then you could say the longer that  
5    there's a downward trend the more predictable that,  
6    let's say, the next month that you would look at the  
7    number of lines and you could say that there's a good  
8    chance that they will go down.  That's predictability  
9    due to a trend.

10          Q.    Okay.

11          A.    If they were to go up one month, down one  
12   month, up one month, down one month, it would be very  
13   dynamic but you wouldn't see a trend.  Well, the trend  
14   would be that it would be going up and down or all  
15   over.

16          Q.    Okay.  I also have the words substitution and  
17   replacement circled?

18          A.    Uh-huh.

19          Q.    Is there a difference in your mind?  Do you  
20   recall, I think Mr. Munn was asking you the  
21   hypothetical that Mr. Witt just alluded to?

22          A.    Uh-huh.

23          Q.    If this happened, what -- you know.  For some  
24   reason I really seemed to hone in on sometimes you  
25   would use the word substitution and sometimes you

1 would use the word replacement.

2 So my question to you is do those two  
3 words mean different things to you and is that why you  
4 didn't use the same one?

5 A. No. I think when you talk about replacement,  
6 you are pretty much talking about substitution. Where  
7 you have a good and that you would normally have that  
8 good and that instead of having that good you would  
9 replace it with something, you are, in essence,  
10 substituting. If you have a good and you would  
11 normally buy that good but then you purchase another  
12 good which you would normally not replace the original  
13 good with, that's a complement.

14 Q. And I note in reference to Mr. Witt's  
15 question, you just talked about BellSouth and you  
16 talked about some kind of study, I think, with  
17 relationship to marketing.

18 Now, my question to you is right under  
19 paragraph -- my note on Paragraph 31, so it's probably  
20 in that area. I think that I made the notes in  
21 response to Mr. Munn's question about, oh, the various  
22 -- probably the web pages and marketing efforts. I  
23 think that you just answer to Mr. Witt that surveys  
24 would be good.

25 But my question to you is are there other



1 types of marketing efforts in addition to ads or  
2 surveys that are generally put forth that weren't  
3 elaborated in that BellSouth Order that you know of?

4 A. Not that I know of. I don't know to what  
5 degree they got into the marketing. There was --  
6 actually, they did say that Alltel -- they did put  
7 forth evidence. They think that Alltel was -- or  
8 AT&T's digital 1 rate plan.

9 It says here on Page 32, Paragraph 43,  
10 while AT&T's advertising attempts to persuade  
11 customers to substitute AT&T's PCH service for  
12 wire-line service, we conclude that there is not  
13 sufficient evidence at this time to show that AT&T's  
14 digital 1 rate plan will have any significant effect  
15 in this regard.

16 So they did see that -- or evidence was  
17 provided that they were marketing in that way. But  
18 they didn't actually show that the customers were  
19 substituting the product. It's important because in  
20 the crux of the FCC in analyzing the evidence, they  
21 primarily wanted to know whether or not, conclusively,  
22 whether or not people were substituting, you know,  
23 their wire-line service for the wireless service  
24 presented as evidence by the BOC.

25 Q. I know that in your testimony, Mr. Ripperger,

1 you talk about some of the CLECs' service. Did you  
2 review all of the CLEC surveys that were presented to  
3 Track A?

4 A. Did I review all of the CLEC service? I did  
5 my best to go through them and be comprehensive and  
6 document them in Exhibit MSRL. I believe that that  
7 one was the -- yes, it is MSRL, both for resellers and  
8 for facilities-based competitors.

9 Q. Based upon your review of those surveys, do  
10 you have -- and this is sort of -- I'm still concerned  
11 about this.

12 Do you recall these PBX questions?

13 A. Yes.

14 Q. That you were asked about?

15 A. Uh-huh.

16 Q. Whether or not somebody else could have made  
17 a mistake, I think, regarding how they were  
18 characterized?

19 A. Yes.

20 Q. Okay, on 32 and on -- based upon your review  
21 of the CLEC surveys and your understanding of the  
22 proceeding, Mr. Ripperger, do you have any reason to  
23 doubt that the information you looked at is somehow  
24 inaccurate?

25 A. No. And the reason being is that because

1 those CLECs which were -- I mean, the CLECs who  
2 represented -- there are a number of ones who were  
3 providing to a smaller number of customers. And then  
4 one large CLEC -- that for the resale -- I mean, I  
5 believe those surveys are fine. For those CLECs who  
6 were represented to provide facilities-based  
7 residential service, they came out and said they have  
8 served absolutely none.

9 So in that regard I don't believe,  
10 according to those representations, that any of these  
11 major CLECs in the states they are serving any  
12 facilities-based residential service to customers at  
13 all, no.

14 Q. But my question -- I understand that based  
15 upon your review, you don't believe that there's any  
16 facilities-based CLECs that are serving residential  
17 customers. But since I have some concern, do you  
18 believe that based upon your review of the information  
19 or the other information in this, do you have any  
20 reason to believe that some of the surveys were  
21 inaccurate because they might have checked the wrong  
22 box on the survey with regard to PBX or shared tenant  
23 service or multi-unit dwelling or whatever you want to  
24 call it?

25 A. No, because the major carriers, the major

1 CLECs in the state, when they were asked about whether  
2 or not they served residential customers, they simply  
3 said no.

4 Q. What about as far as the information that was  
5 provided to you by virtue of resale in those surveys.

6 Do you have any reason to doubt that?

7 A. No, I don't, no.

8 Q. Okay. Is there any reason to believe that  
9 somebody said something was business that should be  
10 residential or something that somebody said was  
11 residential should be business?

12 A. No.

13 Q. Okay. I just wanted to make sure that we are  
14 all on the same page as to at least what we are  
15 looking at, although we are not on the same page as to  
16 what the outcome should be that we are looking, we are  
17 trained on the same things.

18 Mr. Ripperger, at the last page of your  
19 testimony, Page 55, lines 4 through 7, where you are  
20 making your recommendation about what information you  
21 think this Commission should rely on?

22 A. Yes.

23 Q. I don't see the ultimate conclusion about  
24 what you want the Commission to do with that. You are  
25 recommending that the Commission rely on the

1 information to do what?

2 A. In the Commission reviewing the status of  
3 competition in New Mexico and the number of  
4 facilities-based carriers for residential, business  
5 and the number of resellers for business and  
6 residential, that they should look at the answers to  
7 the survey in making their recommendation to the FCC  
8 or considering their recommendation to the FCC.

9 Q. So Staff doesn't have a conclusion, then,  
10 about what the evidence shows and is recommending to  
11 the Commission that they adopt --

12 A. Well, I mean, as far as that goes, I mean,  
13 Staff recommends that -- well, it's been withdrawn by  
14 Qwest, that the numbers presented by Qwest through the  
15 E911 database should be disregarded as evidence. But  
16 that's been withdrawn, so that leaves Cricket and  
17 resale.

18 Our recommendation to the Commission for  
19 the evidence provided by Qwest for Cricket should be  
20 disregarded because it does not live up to the burden  
21 of proof detailed in the FCC's BellSouth Louisiana  
22 Order where they spelled out their criteria for  
23 evaluating wireless customers and that the Commission  
24 should look at the tariffs for the resellers in New  
25 Mexico, the customers that they are targeting and the

1 survey responses and rely on that as evidence.

2 But also, they should seriously doubt  
3 whether or not those resellers that are providing  
4 those services are actually competing providers with  
5 the ILEC. I mean, if you wanted some sort of a quick  
6 synopsis.

7 Q. Well, I just wondered if Staff had a  
8 recommendation as to what the Commission ought to find  
9 on this particular part of Track A.

10 A. Certainly.

11 Q. I have been hearing from the Qwest witnesses  
12 that they believe they have satisfied all the  
13 requirements to meet it, but I do hear that you are  
14 telling things for the Commission to look at, but it  
15 didn't seem to me that ultimately at the end you were  
16 proposing what the Commission would do. You don't  
17 have to.

18 A. Right.

19 Q. I just didn't know --

20 A. I think that Staff would like to say that  
21 Qwest has not met its burden of proof for the sake of  
22 Track A, specifically for proving that Qwest -- I  
23 mean, Cricket customers are substituting their  
24 services for Qwest's wire-line. We believe they have  
25 not met it, so they have not met that burden.

1           And as far as the resellers go, that they  
2     have not met the de minimis standard set by the FCC in  
3     that the -- those resellers should not be considered  
4     to be competing providers with -- or most of them  
5     should not be considered to be competing providers  
6     with Qwest's wire-line service because of the nature  
7     of the customers, the market that they are targeting.

8           HEARING EXAMINER:   Thank you, sir.   Any  
9     Redirect of your witness, Ms. Reilly?

10          MS. REILLY:   Thank you.

11  
12                               REDIRECT EXAMINATION  
13

14     BY MS. REILLY:

15           Q.    Let's go, first, following up on some  
16     questions by the Hearing Examiner.  With respect to  
17     the multiple dwelling unit question and the question  
18     of whether or not in Track A survey responses it's  
19     possible that CLECs just checked the wrong box.

20                   Who did you talk to about multiple  
21     dwelling units to inform yourself about how CLECs  
22     report those customers?

23           A.    I spoke to both WorldCom and e.spire.

24           Q.    And what did they say that relates to whether  
25     or not CLECs might have checked the wrong box with

1     respect to multiple dwelling unit customers and  
2     whether or not they are residential or business?

3           A.     They would have said that, that the person  
4     owning the multiple dwelling unit would be the  
5     customer of either the CLEC or the ILEC.  So if they  
6     are a business customer, you know, they would check  
7     the business customer box, I would assume, at that  
8     point.

9           Q.     Were you satisfied that that's how they  
10    account for those customers and there wasn't any  
11    confusion on their part?

12          A.     They would account -- they would account for  
13    those customers in that way.  But I would think -- but  
14    in saying whether or not they were residential  
15    customers, they would be truthful to the Commission  
16    whether or not they believe there were any residential  
17    customers in apartment complexes being served and then  
18    answer accordingly.

19          Q.     Thank you.  Mr. Munn asked you early on in  
20    his Cross some questions about when you were providing  
21    your testimony, you didn't provide any evidence of  
22    your own, you only responded to Qwest's testimony.

23                   Do you recall that?

24          A.     Is this relating to the prior question?

25          Q.     No.  I'm starting somewhere else.  We're



1 going all the way back to the beginning of Mr. Munn's  
2 Cross.

3 A. All right.

4 Q. He asked you some questions about how in  
5 providing your testimony here you weren't providing  
6 any testimony of your own. You were only responding  
7 to Qwest's testimony.

8 Do you recall that?

9 A. Yes, I recall that.

10 Q. What else besides Qwest's testimony did you  
11 look at in preparing your testimony?

12 A. I also looked at decisions by the FCC. I  
13 looked at Track A survey responses. I looked at a  
14 number of other items besides just their testimony.

15 Q. Would you consider Track A survey responses  
16 to be independent evidence that was not provided by  
17 Qwest?

18 A. Yes.

19 Q. You got into a discussion with Mr. Munn about  
20 the BellSouth Louisiana 2 Order at Paragraph 48.

21 Do you have that?

22 A. (Witness refers to document.)

23 Yes.

24 Q. He asked you to quote from a sentence that  
25 starts 'we note, however'?

1 A. Yes.

2 Q. What does the next sentence or two say?

3 A. It says:

4 In particular, if all other requirements  
5 of Section 271 have been satisfied it does  
6 not appear to be consistent with  
7 Congressional intent to exclude a BOC from  
8 the in-region interLATA market solely  
9 because the competitor service to  
10 residential customers is wholly through  
11 resale. In light of our conclusion below  
12 that BellSouth has not satisfied the  
13 requirements of the competitive checklist  
14 in Section 272, however, that is not the  
15 case presented by this Application.

16 Q. Go ahead.

17 A. Thus we do not conclude whether BellSouth has  
18 satisfied the requirements of Track A  
19 based on its implemented interconnection  
20 agreements with competitive wire-line  
21 LECs.

22 Q. Mr. Munn asked you some questions about the  
23 number of resold residential lines, the 3,064 number  
24 and whether or not it's changing in dynamic. And  
25 Ms. Hurst asked you some questions about that too.

1           My question for you is did Qwest ask the  
2 Commission to accept without any further updates the  
3 3,064 number in the filings that led to the docketing  
4 of this case?

5           A.     Yes.

6           Q.     You were asked by Mr. Munn to admit that one  
7 CLEC, Comm South, is serving 1,069 residential  
8 customers in New Mexico.

9                     Do you recall that?

10           MR. MUNN:   Your Honor, I'll object. That  
11 inaccurately represents the statement. It's 1,369,  
12 not 1,069.

13           MS. REILLY: I'm sorry. Will say that  
14 again?

15           MR. MUNN:   The number is 1,369. It's  
16 Attachment B to his testimony.

17           MS. REILLY: That's what I have written  
18 down. Maybe that's not what I said.

19           MR. MUNN:   Maybe I misheard. I thought  
20 you said 1,069.

21           BY MS. REILLY:

22           Q.     I'm going to ask it again so the record is  
23 clear. You were asked by Mr. Munn to admit that one  
24 CLEC, Comm South, is serving 1,1369 residential  
25 customers in New Mexico.

1 Do you recall that?

2 A. Yes.

3 Q. Besides that fact, the fact of that number,  
4 what other factors should be looked at in evaluating  
5 that provider, Comm South, for Track A purposes?

6 A. A number is one thing. Who they are serving  
7 to is another. And whether or not it meets the de  
8 minimis standard is another.

9 Also, if you look historically at FCC  
10 decisions, you can tell that not only are they looking  
11 at a quantity or searching for that de minimis floor,  
12 they also consider certain types of provisioning of  
13 service by CLECs more important than others. In  
14 particular, facilities-based, they will always defer  
15 to facilities-based before they will for resale. For  
16 instance, in the Arkansas Order, they speak and defer  
17 to a substantial number of Alltel lines. They don't  
18 talk much about -- at all the fact that there were  
19 30,000 resale lines present in that state.

20 Q. With respect to Cricket, Mr. Munn asked you a  
21 series of hypothetical questions, he said, so you  
22 wouldn't have to be concerned about the evidence.

23 In looking at the material presented by  
24 Qwest, what kind of material were you looking for,  
25 real or hypothetical?

1           A.     Real.

2           Q.     And with respect to Qwest, what, if any, of  
3     the hypothetical situations posed by Mr. Munn are  
4     established in the testimony and other material  
5     presented by Qwest?

6           A.     None.

7           Q.     And how does the situation before us in this  
8     case differ from the hypothetical situations posed by  
9     Mr. Munn?

10          A.     Mr. Munn is assuming that what he is talking  
11     about for the customers in New Mexico have been  
12     established. You have to establish it through a  
13     burden of proof, which the FCC has set out in the  
14     second BellSouth Louisiana Order for the evaluation of  
15     whether or not wire-line service -- I mean, wireless  
16     service is being substituted for wire-line service in  
17     the state in question.

18          Q.     You were asked a yes or no question by  
19     Mr. Munn, something to the effect of didn't the FCC  
20     say marketing efforts are relevant.

21                     Do you recall that?

22          A.     Yes.

23          Q.     What else did the FCC say about what its  
24     other considerations are?

25          A.     Let me go through here. (Witness refers to

1 document.) There is a paragraph which summarizes it  
2 well, which I included in my testimony. Okay. If you  
3 look at Page 25, Paragraph 31.

4 MR. MUNN: Did you mention you were  
5 looking at your testimony?

6 THE WITNESS: I'm sorry. The BellSouth  
7 Louisiana Order.

8 MR. MUNN: Thank you.

9 THE WITNESS: Paragraph 31.

10 BY MS. REILLY:

11 Q. And that says?

12 A. Okay. Evidence that broadband PCS services  
13 constitutes a competitive --

14 Q. Can you go slow for the Court Reporter,  
15 please?

16 A. I'm sorry. Let me start from the top.  
17 We believe that the BOC must show that  
18 broadband PCS is being used to replace  
19 wire-line service, not as a supplement to  
20 wire-line. In previous Orders the  
21 Commission has stated that the use of the  
22 term competing provider in Section  
23 271(C)(1)(A) suggests that there must be  
24 an actual commercial alternative to the  
25 BOC. To the extent that consumers

1 purchase PCS service as a supplement to  
2 their existing wire-line service, the two  
3 services are not competing with each  
4 other. Evidence that broadband PCS  
5 service constitutes a competitive  
6 alternative could include studies or other  
7 objective analyses, identifying customers  
8 that have replaced their wire-line service  
9 with broadband PCS service or would be  
10 willing to consider doing so based on  
11 price comparisons.

12 In doing studies, for instance, when they  
13 evaluated the M/A/R/C study on Page 27, Paragraph 35,  
14 they pointed to methodological deficiencies in the  
15 studies. The sample group was not randomly selected.  
16 The study is not based on statistical analysis. The  
17 study disguises the complementary nature of the  
18 services.

19 Q. Has the FCC ever said that marketing --  
20 evidence of marketing alone is sufficient to satisfy  
21 Track A?

22 A. No.

23 Q. What does marketing show about actual  
24 purchase levels?

25 A. It doesn't show anything. It shows that the

1 wireless carriers are representing to the customers  
2 that that's what the product could be.

3 Q. What has the FCC said about customer  
4 affidavits as a way of establishing that a PCS carrier  
5 -- I'm sorry. As a way of establishing that PCS is  
6 replacing land-line service?

7 A. I've seen no reference to affidavits in the  
8 FCC orders.

9 Q. You were talking with Mr. Munn about who is a  
10 competing provider relative to high credit risk  
11 customers.

12 What has the FCC said about competing  
13 providers that, in your view, relates to credit risk  
14 customers, people that have been disconnected?

15 A. It says here on Paragraph 75.

16 MR. MUNN: I'm just wondering where.

17 THE WITNESS: I'm sorry, Ameritech  
18 Michigan, Paragraph 75.

19 MR. MUNN: Thank you.

20 THE WITNESS: Yes.

21 We determined in the SBC Oklahoma Order  
22 that the use of the term competing  
23 provider in Section 271(C)(1)(A) suggests  
24 that there must be actual commercial  
25 alternative to the BOC.



1           And in reviewing that, if someone gets to  
2   be an actual commercial alternative to the BOC, I  
3   would submit that they actually have to be competing  
4   for the BOC's customers. If those customers have been  
5   disconnected, they can no longer get service from the  
6   BOC. But they can get service from the other  
7   provider. They're not really competing.

8   BY MS. REILLY:

9           Q.   Mr. Munn asked you about the July 17th 2001,  
10   Sixth Wireless Report. My notes get a little sketchy,  
11   but he had you read something starting with a few  
12   carriers have designed service to compete with  
13   land-line service, et cetera. It was with respect to  
14   Cricket?

15          A.   Right.

16          Q.   Apparently Leap Wireless and Cricket were  
17   cited there as one of those carriers.

18                Do you recall that?

19          A.   Yes.

20          Q.   What, if anything, did you see in that Order  
21   about how many customers Cricket has in New Mexico?

22          A.   Nothing.

23          Q.   Mr. Munn pointed you to Cricket's ad attached  
24   to Mr. Badal's affidavit outlining some of the  
25   positive features, in his view, that might make

1 Cricket attractive.

2 What are the Cricket features that might  
3 make Cricket less attractive than traditional  
4 land-line service?

5 A. The calling area is smaller. You have to pay  
6 up front for your services. If you have a Cricket  
7 phone in Albuquerque, you go outside the calling area,  
8 you can't call anywhere. I mean, your phone doesn't  
9 work. If you have a Cricket phone in Albuquerque and  
10 you wish to go to Santa Fe and make a call, your  
11 Cricket phone won't even work in Santa Fe. I think  
12 those are a lot of negatives. Also you have the issue  
13 of static and the other problems that you get with  
14 broadband PCS, depending on where you are standing, I  
15 guess, at the time.

16 Q. I'm going to scan through here, but I think  
17 I'm done. I have a complicated system of writing on  
18 the back of my paper when I run out of paper.

19 HEARING EXAMINER: I noticed that.

20 MS. REILLY: It makes things very  
21 confusing.

22 HEARING EXAMINER: After the hearing  
23 yesterday Mr. Montgomery approached me regarding the  
24 paper situation, not specifically related to the case,  
25 so I didn't feel the need to disclose it, but we had

1 quite the discussion on the nature of paper and the  
2 number of copies here at the Commission. So I  
3 sympathize with paper requests. I'm glad you are  
4 using the backs, Ms. Reilly.

5 MS. REILLY: Even though it makes me very  
6 confused. That's all I have.

7 HEARING EXAMINER: Thank you. We are  
8 back to you, Mr. Munn.

9 MR. MUNN: Very briefly.

10 HEARING EXAMINER: All right. Just  
11 remember, he or she who offends the Court Reporter  
12 could have a rough way to go.

13  
14 RECROSS-EXAMINATION

15  
16 BY MR. MUNN:

17 Q. Mr. Ripperger, do you recall a question from  
18 the Hearing Examiner about the term replacement versus  
19 the term substitute?

20 A. Yes.

21 MR. MUNN: I think, actually, you just  
22 read the Order, but Your Honor, I can either state  
23 this for a briefing point or ask a question. It's  
24 probably quicker if I just state it.

25 Paragraph 31 of the BellSouth Louisiana 2

1 Order which Mr. Ripperger just read is where it sets  
2 out that the BOC needs to show that broadband PCS is  
3 being used to replace wire-line service.

4 That's what I believe my questions were  
5 going to and that's why I used that term. Just so you  
6 are aware for the briefing.

7 BY MR. MUNN:

8 Q. Mr. Ripperger, would you turn to Attachment  
9 MSRA to your affidavit or testimony, please?

10 A. (Witness complies.) Yes.

11 Q. You had a discussion with the Hearing  
12 Examiner about a trend in residential resale lines in  
13 New Mexico; correct?

14 A. Yes.

15 Q. Would you agree that from January 1 to  
16 February 1 of 2001, that the number of residential  
17 resale lines in New Mexico actually increased?

18 A. Yes.

19 Q. And that from February 1 to March -- I'm  
20 sorry, February of 2001 to March 2001, the number of  
21 residential resale lines actually increased as well?

22 A. Yes.

23 Q. And the same thing for March to April?

24 A. Yes.

25 Q. I would give you, so you don't feel that I'm

1 leaving something out, that from April of 2001 through  
2 October of 2001, there was a decrease in those months;  
3 correct?

4 A. Yes.

5 Q. Is it fair to say that the economy was  
6 particularly weak in the second half of 2001?

7 A. I would say that the economy has weakened  
8 recently, yes, during that period, yes.

9 Q. Mr. Ripperger, my last question, you were --  
10 just asked some questions about sort of a limitation,  
11 I guess, with respect to Cricket, that you couldn't  
12 take -- if you were an Albuquerque resident, you  
13 couldn't take your Cricket phone to Santa Fe and make  
14 a call?

15 A. Right.

16 Q. Do you recall that testimony?

17 A. Yes.

18 Q. Isn't it also true that since we are viewing  
19 PCS as a replacement for wire-line service, not with  
20 respect to other wireless services, that you also  
21 couldn't take your Qwest wire-line phone, unhook it,  
22 drive to Santa Fe and make a call there.

23 Isn't that true?

24 A. That's true.

25 Q. Isn't it true that you actually can, for an

1 additional fee, purchase the ability with Cricket to  
2 make calls in both Santa Fe and Albuquerque?

3 A. Through long distance?

4 Q. No, not through long distance, just an  
5 additional fee?

6 A. Yes.

7 MR. MUNN: I have no further questions,  
8 thank you, sir.

9 HEARING EXAMINER: Do you know that, Mr.  
10 Ripperger?

11 THE WITNESS: It was my impression that  
12 it was under the long distance rate.

13 HEARING EXAMINER: Okay. But you are not  
14 disputing that that's a possibility of the service?  
15 We don't know.

16 THE WITNESS: No. It's just that I think  
17 for the basic service you go from Albuquerque to Santa  
18 Fe that in using the phone that you have to get your  
19 number changed, I think, to --

20 MS. REILLY: I have one Redirect question.  
21 Is a call between Albuquerque and Santa Fe a long  
22 distance call no matter what phone you make it from?

23 THE WITNESS: No.

24 MS. REILLY: Albuquerque and Santa Fe is  
25 not long distance?

1 THE WITNESS: For a wire-line it is.

2 MS. REILLY: Okay.

3 THE WITNESS: Okay.

4 HEARING EXAMINER: Mr. Witt?

5 MR. WITT: I have no questions. Thank  
6 you.

7 HEARING EXAMINER: Mr. Mittle?

8 MR. MITTLE: No, thank you.

9 HEARING EXAMINER: All right. I thank  
10 you, Mr. Ripperger. I don't have any further  
11 questions. You are excused, sir. Just make sure that  
12 the Court Reporter gets your testimony.

13 Ms. Reilly, anything further from Staff?

14 MS. REILLY: I'd be crazy.

15 HEARING EXAMINER: Yes, you probably  
16 would be. I've got a few points that I need to bring  
17 up. Number one, I forgot to do it at the beginning.

18 The statement of the case, which I believe  
19 Ms. Reilly was pretty succinct in her explanation in  
20 the e-mail that basically it's sort of just a courtesy  
21 procedural posture of the case that the -- has been  
22 provided to Hearing Examiners. I unfortunately didn't  
23 catch on or I would have been requiring it in every  
24 case. Anyway, I found out about it and I know that,  
25 Mr. Olson, you had some tweakings because I got your

1 e-mail too.

2 I never got -- I forgot to ask the parties  
3 if they had a position whether or not the Track A  
4 statement of the case as amended by Qwest was  
5 satisfactory to the parties to be presented to them as  
6 some type of statement of the case, a procedural tool  
7 that the Commission could either accept or not accept.

8 MS. REILLY: We have a few issues. I  
9 brought it up with Mr. Olson but we haven't had much  
10 time to talk about it. We have no problem with the  
11 Hearing Examiner having both versions and deciding for  
12 herself what to use.

13 If we are going to present you with a  
14 single statement of the case, we'll have to negotiate  
15 with Qwest about some things that we thought were kind  
16 of in the advocacy direction.

17 HEARING EXAMINER: All right. So then,  
18 basically, the proposition from Staff is that of the  
19 -- I have the Staff version and I have the Qwest  
20 version and that the Commission will be able to rely  
21 on one or both or a combination.

22 Any objection to that from anybody?

23 MR. MUNN: No objection from Qwest. But  
24 I would say to make it easier, what we will do is  
25 present a red-lined version so that anything that's



1 red-lined would be what is in addition to what  
2 Ms. Reilly put.

3 HEARING EXAMINER: Mr. Olson did that and  
4 I actually have a hard copy and I have that e-mail  
5 copy. So it shows exactly what Qwest wanted to  
6 change.

7 MR. MUNN: Right. I think I was  
8 traveling the day that got sent out.

9 HEARING EXAMINER: Any objection,  
10 Mr. Mittle?

11 MR. MITTLE: Quite honestly, I haven't  
12 read either one.

13 HEARING EXAMINER: Okay. Then I don't  
14 want to hear from you.

15 MR. MITTLE: It kept me up late last  
16 night. It read like a novel. So I may have some  
17 comments. I'll try to get you a red-lined version.

18 HEARING EXAMINER: Okay. This is a  
19 procedural tool at this point. I'll just -- I like  
20 the part about not having a keyboard or the Commission  
21 has to keyboard all this procedural stuff over and  
22 over again.

23 So I'll accept, Mr. Witt, any objection to  
24 the Commission having the two procedural versions.

25 MR. WITT: I don't have any objection. I

1 have a preference, needless to say, with the Staff's  
2 version, but I have no objection to the Commission  
3 having both.

4 HEARING EXAMINER: That's because you are  
5 aligned with them according to Mr. Munn. Now you want  
6 to accept their --

7 MR. MUNN: Needless to say.

8 HEARING EXAMINER: Well, I'll accept them  
9 as sort of the vessel or whatever to gather  
10 information for the Commission and they can use them  
11 for whatever the Commission would like. That was  
12 No. 1.

13 My No. 2 note says remember. Again, I did  
14 this at the beginning of the hearing. Remember, too,  
15 look at your Track A Procedural Order, Item G, which  
16 tells you exactly what you need to do for post hearing  
17 rights. But, remember, the specific instruction that  
18 the parties will include.

19 So I sort of amended that G to say you  
20 will include in your post hearing writing the de  
21 minimis reference and legal argument.

22 Mr. Olson, do you have a question about  
23 that?

24 MR. OLSON: I do have a question about the  
25 post hearing procedure here that I wonder if we could

1 get some clarification on.

2 We are proposing to make arrangements to  
3 expedite the filing of the transcript, probably to  
4 Monday.

5 As we read the original Track A Procedural  
6 Order, the matter was referred to the Hearing Examiner  
7 to conduct the hearing, but the usual language about  
8 Recommended Decision was not included.

9 We had talked before Christmas about  
10 moving to expedite the post hearing findings and other  
11 filings. But it's my understanding, and I think it's  
12 at least shared by some of the parties in the room,  
13 that the matter is going to be submitted directly to  
14 the Commission on the post hearing filings with no  
15 interim Recommended Decision. Then we will not ask to  
16 expedite the post hearing filings. We will expedite  
17 the filing of the transcript.

18 HEARING EXAMINER: Unless the Commission  
19 has issued another Order that I don't know about,  
20 Mr. Olson, I'm in total agreement with you. I don't  
21 necessarily see anything in the Commission's Order  
22 which has requested or required me to provide a  
23 Recommended Decision in this case. Therefore, again,  
24 I point you to G. You can make whatever kind of  
25 Motion that you want to regarding if you want to try

1 to change things. Right now, all I point out to you  
2 is that Item G tells you what you need to do and my  
3 change in this was an addition that you include a de  
4 minimis section as I've outlined before.

5 I also point you to the italicized  
6 second-to-last complete sentence which basically tells  
7 you proposed forms of Order and request for oral  
8 argument regarding all aspects of Track A, the Group 5  
9 issue that is -- are to be included in that.

10 So it's not just my reading of this. You  
11 are not just going to be proposing Findings and  
12 Conclusions on the hearing. It's all on Track A.

13 MR. OLSON: That's our understanding of  
14 the Order as well. We are not proposing to move to  
15 change Paragraph G with that clarification.

16 HEARING EXAMINER: Okay. So, yes, it is  
17 going directly is my understanding, sir. Okay. So  
18 that takes care of that note.

19 Let me just formally for the record  
20 withdraw my Bench request from Qwest regarding  
21 interconnection agreements. I sort of had stayed my  
22 request and now I withdraw it.

23 MR. MITTLE: Do we have any outstanding  
24 Bench requests?

25 MS. REILLY: No. Just the de minimis

1 thing. No.

2 HEARING EXAMINER: Mr. Munn?

3 MR. MUNN: I don't think so.

4 HEARING EXAMINER: All right.

5 MR. MUNN: We believe there is not  
6 anything else outstanding.

7 HEARING EXAMINER: So we've talked about  
8 your post hearing writing and I've withdrawn that.  
9 You know it's for the whole thing. You are going to  
10 include de minimis and we have talked about the  
11 statement of the case. Those are the procedural  
12 matters that I know that I need to deal with.

13 Mr. Witt?

14 MR. WITT: Would you reiterate the due  
15 date for the post hearing writings is?

16 HEARING EXAMINER: I'll read the whole  
17 thing since I have been alluding to it. Item G says  
18 within 21 calendar days of the filing of the formal  
19 transcript of the hearing set forth above interested  
20 parties shall file consistent with the procedure set  
21 forth in the amended Third Procedural Order, Proposed  
22 Findings of Fact, Conclusions of Law, Proposed Forms  
23 of Order and Request for Oral Argument respecting all,  
24 italicized, aspects of Track A, the Group 5 issue,  
25 that is, for the reasons set forth above, hereby

1 bifurcated from the other two issues addressed by the  
2 facilitator in the Group 5 report.

3 MR. WITT: Thank you.

4 HEARING EXAMINER: Yes, sir. Anything  
5 further procedurally?

6 (No response.)

7 HEARING EXAMINER: No. Very good. Let me  
8 first thank all participants on behalf of the  
9 Commission. I appreciate you putting the effort and  
10 the time to come to give the Commission evidence in  
11 this matter.

12 And, Pat, thanks for staying. If we have  
13 nothing else, we are adjourned. Thank you.

14 (Whereupon, the hearing in the above  
15 matter was adjourned.)

16 \* \* \*

STATE OF NEW MEXICO     )  
                                      )  
COUNTY OF SANTA FE     )     SS.

REPORTER'S CERTIFICATE

I, Patricia O'Brien, Certified Court Reporter and Notary Public of the firm SANTA FE DEPOSITION SERVICE, do hereby certify that the following transcript is a complete and accurate record of said proceedings as the same were recorded by me or under my supervision.

Dated at SANTA FE, NEW MEXICO, this 28th day of January, 2002.

A handwritten signature in black ink that reads "Patricia O'Brien". The signature is written in a cursive style with a large, looping "P" and "B".

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Patricia O'Brien, CCR  
Certified Court Reporter No. 1  
License Expires: 12/31/2002

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# EXHIBITS

	<u>Marked</u>	<u>Admitted</u>
QWEST EXHIBIT NO. 3 (partial conf.)	27	32
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